No. 96-511

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

JANET RENO, *et al.*,

Appellants,

—v.—

AMERICAN CIVIL LIBERTIES UNION, *et al.*,

Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTION TO AFFIRM

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Should this Court summarily affirm the three-judge court's grant of a preliminary injunction against the criminal provisions of the Communications Decency Act on First Amendment grounds, based upon undisputed factual findings establishing that it is technologically and economically infeasible to comply with the Act's provisions, and that the Act would unconstitutionally and ineffectively ban a wide variety of protected speech in the democratic, noninvasive and global medium of cyberspace?

LIST OF PARTIES

Appellees agree with the List of Parties in the Jurisdictional Statement, with the addition of the parent corporation for plaintiff Institute for Global Communications, which is The Tides Center.

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Pursuant to Rule 18.6 of the Rules of the Supreme Court, appellees American Civil Liberties Union, *et al.*, respectfully move for summary affirmance of the preliminary injunction order entered by the three-judge district court on June 12, 1996.

INTRODUCTION

The government appeals from a preliminary injunction barring the enforcement of the Communications Decency Act of 1996 (CDA), which is Congress' first attempt to regulate the content of communications in the democratizing, global medium of cyberspace.[1] International computer networks like the Internet represent a revolution in human communication that has been compared by some to the development of the printing press. The Internet allows millions of average citizens around the globe to communicate, publish, and exchange information on a vast array of subjects with a worldwide and virtually limitless audience. The Internet thus embodies the values that underlie the First Amendment by nurturing the robust exchange of ideas and equalizing the distribution of information.

The CDA would stifle this promising new medium. The CDA makes it a crime, punishable by up to two years in prison, for anyone to use online computer communications to transmit or "display in a manner available to minors" any material that is "indecent" or "patently offensive." The three-judge district court correctly enjoined these provisions based on detailed factual findings that are not disputed

[1] The CDA was enacted as Title V of the Telecommunications Act of 1996, Pub.L.No. 104-104, §502, 110 Stat. 56, 133-35. The CDA will be codified at 47 U.S.C. §§223(a) to (h), and it is those cites that appellees will use throughout this brief.

on appeal and that will be described in more detail below.[2] *ACLU v. Reno*, 929 F.Supp. 824 (E.D.Pa. 1996), reproduced as Appendix A of the government's Jurisdictional Statement. Four findings of the lower court, however, are worth particular emphasis.

First, the three-judge court found that the Internet is "the most participatory marketplace of mass speech that . . . the world has yet seen." J.S.App. 141a. The empowering and noninvasive nature of the Internet make it a very different medium than radio or television. Second, use of the Internet is growing exponentially and, in part because of that increased use, the technology that governs the Internet is continuously and rapidly evolving. Third, given the current state of technology, there is no way for the vast majority of Internet users to distinguish between adults and minors in their audience and, even in those parts of the Internet where it might be technologically possible, it is economically infeasible for many speakers, including the plaintiffs in this case. For these speakers, the only way to ensure that minors do not have access to speech that might later be deemed "indecent" by a criminal jury is to eliminate such speech from the Internet entirely. Fourth, less restrictive alternatives already exist that empower parents to make private decisions within the family about what materials their children should see. The CDA, conversely, is uniquely ill-suited to shield children from sexually explicit material on the Internet precisely because it is a global communications medium. The record reveals that at least 40% of the speech now on the Internet originates overseas and the general consensus is that this percentage is growing. That speech can be accessed as easily as speech that originates domestically but, as the lower court found, and the government concedes, that speech is beyond the reach of our domestic criminal law.

Based on these findings, the three-judge court reached the unanimous conclusion that the inevitable effect of the CDA would be to deprive adult Internet users of their right to send and receive constitutionally protected speech that deals with sexual issues. Because that result so clearly violates the First Amendment under this Court's well-established jurisprudence, the decision below can and should be summarily affirmed.

[2] A separate challenge to §223(d), filed in the Southern District of New York, also resulted in a preliminary injunction from a three-judge court on July 29, 1996. *Shea v. Reno*, 930 F.Supp 916 (S.D.N.Y. 1996). The government has suggested that the *Shea* case be held pending the outcome of this case; ACLU appellees agree.

STATEMENT OF THE CASE

This case involves the government's attempt to regulate a new technology that will serve as the basis for global communication in the twenty-first century. Unfortunately, Congress held no hearings about the nature of the Internet before it enacted the CDA. The sad but predictable result is that Congress drafted a statute that is both ineffective and unconstitutional, as the lower court found after engaging in the detailed factual inquiry that Congress chose not to do.

A. The Statutory Framework

The criminal provisions challenged in this action are embodied in two sections of the CDA. Section 223(a)(1)(B) applies to "telecommunications devices," a term that is nowhere defined in the Act but that the parties have agreed includes a modem. J.S.App. 6a-7a n.5. Under §223(a)(1)(B), anyone who transmits an "indecent" communication, "knowing that the recipient of the communication is under 18 years of age," now faces felony charges. The term "inde-

cent" is also undefined in the statute.[3]

Section 223(d)(1) applies to "interactive computer services," a phrase that is defined in the CDA. *See* 47 U.S.C. §230(e)(2). In contrast to the indecency provision, this section of the statute makes it a crime to "send" or "display in a manner available" to any person under eighteen any communication that, "in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs."[4]

Throughout the district court proceedings, the government made very little effort to defend the constitutionality of these criminal provisions, standing alone. Instead, the government's constitutional defense primarily relied on the so-called "safe harbor" provisions set forth in §223(e)(5) of the Act. Section 223(e)(5)(A) creates an affirmative defense for anyone who "has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors to [prohibited] communications . . . ." Section 223(e)(5)(B) creates an affirmative defense for anyone who "has restricted access to such communication by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number." At trial, much of the evidence concerned the meaning, scope, and practical impact of these so-called defenses.

B. The Plaintiffs

The ACLU plaintiffs represent a wide variety of online users, content providers, and service providers. The subject matter of plaintiffs' speech ranges from human rights, censorship, and pornography, to the discussion of lesbian and gay issues, safer sex, and rape in prison.[5] The ALA plaintiffs also include a wide variety of speakers, including the American Library Association, trade groups such as the American Publishers Association, and service providers such as America Online, Microsoft, Compuserve and Prodigy. None of the plaintiffs are pornographers, as that term is commonly understood, but all of them provide online speech that is sexually oriented or contains vulgar words. J.S.App. 61a, ¶123. Many of the ACLU plaintiffs are individuals or nonprofit organizations with limited budgets; some rely heavily on volunteer labor.[6] Many also believe that the information and ideas they convey online about sexual issues are valuable, not harmful, for older minors.[7]

For example, plaintiff Critical Path AIDS Project, Inc. (Critical Path) maintains a web site that offers a wide variety of information about AIDS and safer sex. Kiyoshi Kuromiya, Director of Critical Path, testified:

> Because most cases of AIDS are transmitted through sexual contact, the information must deal with descriptions of risky sexual activity.

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[3] Section 223(a)(1)(B) also prohibits the transmission of "obscene" communications. That prohibition has not been challenged in this case.

[4] Plaintiffs also challenged §§223(a)(2) and (d)(2), which make it a crime to "knowingly permit" use of a telecommunications facility for expression prohibited by §§223(a)(1)(B) or 223(d)(1).

[5] For a fuller description of the plaintiffs, *see* The Parties' Stipulations in Preparation for the Preliminary Injunction Hearing, at ¶¶70-356, adopted as findings of the trial court, J.S.App. 12a n.9. Those paragraphs are reproduced in the Appendix to this motion. *See also* J.S.App. at 42a-48, ¶¶74-78, 85.

[6] *See* J.S.App. 44a, ¶76.

[7] *Id.* at 71a (Sloviter, C.J.)("[P]laintiffs presented testimony that [their] material . . . may be critically important for certain older minors. For example, there was testimony that one quarter of all new HIV infections in the United States is estimated to occur in young people between the ages of 13 and 20, an estimate the government made no effort to rebut").

> In order to ensure that readers understand the materials, it often must be written using street or colloquial language rather than clinical language in order to be understood by most lay persons . . . . In my view, the information that Critical Path provides saves lives of both teenagers and adults and any attempt to censor or restrict the free flow of this life-saving information would be a critical public health mistake.[8]

Plaintiff Wildcat Press, a publisher of gay and lesbian literature, publishes two electronic magazines on the World Wide Web that are written by and for gay and lesbian youth. Patricia Nell Warren testified that the *YouthArts* e-zines "provide a creative forum for many youth to discuss their coming out, their experiences with gay life and their sense of their own identity . . . . Many of the contributors openly discuss sex and sexuality, often using slang common to their age group." Decl. of Patricia Nell Warren, at 9, ¶¶21, 23.

Plaintiff Stop Prisoner Rape (SPR), a nonprofit organization dedicated to combating the rape of prisoners and providing assistance to survivors, has a web site that contains a variety of textual and graphical documents concerning prisoner rape, including a number of testimonials and excerpts of letters from survivors of prisoner rape. Decl. of Stephen Donaldson. Plaintiff American Civil Liberties Union has a feature on its web site that allows users to access this Court's decision in *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978), including the transcript of George Carlin's "seven dirty words" monologue that was deemed

[8] Decl. of Kiyoshi Kuromiya, at 3-5, ¶13, ¶15, ¶16. Direct testimony at trial was presented by declaration. J.S.App. 5a.

"indecent" for radio broadcast during daytime hours by the FCC.[9] Other plaintiffs include Human Rights Watch, an international human rights monitoring organization that uses the Internet to distribute reports and to communicate about human rights issues such as "torture, rape, mutilation, execution, and mass murder;"[10] Justice on Campus, which provides an online information clearinghouse on free speech issues on college campuses; and John Troyer, who maintains The Safer Sex Page, a web site with information on safer sex that includes explicit language and pictures, and an online discussion forum in which users can comment on subjects such as condom brands, masturbation, and how to talk about safer sex with a partner.

The government has consistently refused to say that plaintiffs' speech is not covered by the CDA. As the lower court noted, "The Government has not by motion challenged the standing of any plaintiff in either case, and we harbor no doubts of our own on that point." J.S.App. 12a n.9; *see also id.* at 107a (Dalzell, J.).

C. Factual Findings By The Three-Judge District Court

The preliminary injunction proceedings included five days of testimony, documentary evidence, and detailed stipulations. The decision issued by the three-judge court contained over four hundred separate findings of fact that included information about the nature of communication and content in the cyberspace medium, the ability of users to restrict access to unwanted material, and the impracticality of

[9] Decl. of Barry Steinhardt. The ACLU also hosts unmoderated online discussion groups, including a "free speech zone," that allow citizens to discuss and debate a variety of civil liberties issues.

[10] App. at 6a, ¶89.

the statutory defenses. Notably, 334 of the 409 separate fact-findings adopted by the trial court were derived from stipulations the parties filed with the court. J.S.App. 12a-30a, ¶¶1-43; App. ¶¶70-356. Thus, the majority of the facts necessary to the court's holding *were not disputed by the government, and are not disputed on appeal*. J.S.App. 11a-12a.

1. The Nature Of The Medium

The findings of fact established that the online medium is a "unique and wholly new medium of worldwide human communication." *Id.* at 46a, ¶81. The Internet is a giant, global communications network that connects innumerable smaller computer networks. *Id.* at 12a, ¶1. While difficult to estimate due to rapid growth, the Internet is believed to connect over 9,400,000 host computers worldwide and as many as 40 million people. *Id.* at 13a, ¶3. Indeed, only about 60% of the Internet's host computers are currently located in the United States. *Id.* Thus, the medium allows "literally tens of millions of people . . . to exchange information. These communications can occur almost instantaneously, and can be directed either to specific individuals, to a broader group of people interested in a particular subject, or to the world as a whole." *Id.* at 13a-14a, ¶4.

The court also found that the evidence "showed significant differences between Internet communications and communications received by radio or television." *Id.* at 49a, ¶89. Communications on the Internet do not "'invade' an individual's home or appear on one's computer screen unbidden." *Id.* at ¶88. Rather, the receipt of information on the Internet "requires a series of affirmative steps more deliberate and directed than merely turning a dial." *Id.* at ¶89. The Internet is also distinct because it is "not exclusively, or even primarily, a means of commercial communication." *Id.* at 43a, ¶75. In addition, "[t]he start-up and operating costs

entailed by communication on the Internet are significantly lower than those associated with use of other forms of mass communication." *Id.* at 44a, ¶76.

There are a variety of ways in which users can communicate in cyberspace. *See generally id.* at 21a-25a, ¶¶22-32. Electronic mail, or e-mail, allows an online user to address and transmit a message to one or more people, "comparable in principle to sending a first class letter." *Id.* at 21a, ¶23. In addition, there are a wide variety of online discussion forums that allow groups of users to discuss and debate subjects of interest. The three most common methods for online discussion are mail exploders or "listservs," USENET newsgroups, and chat rooms. "Mail exploders," or "listservs," allow online users to subscribe to mailing lists that discuss particular subjects of interest. Subscribers send an e-mail message to the "list," and the "mail exploder" automatically and simultaneously sends the message to all of the other subscribers on the list; subscribers can reply to the message by sending a response to the list. *Id.* at 22a, ¶24.

The second type of forum for online discussion occurs on "USENET newsgroups . . . [which] are among the most popular and widespread applications of Internet services, and cover all imaginable topics of interest to users." *Id.* at 23a, ¶25. Unlike mail exploders, online users need not "subscribe" to newsgroups in advance in order to participate. Rather, the newsgroups are huge databases of messages arranged according to subject matter, and online users may access or send a message to any newsgroup at any time. *Id.* at 22a-23a, ¶25. There are newsgroups on more than 15,000 different subjects; "[c]ollectively, almost 100,000 new messages (or 'articles') are posted to newsgroups each day." *Id.* at 24a, ¶26.

Third, chat rooms, or "Internet Relay Chats," allow "individuals on the Internet [to] . . . engage in an immediate

dialog, in 'real time,' with other people on the Internet . . . . IRC is analogous to a telephone party line, using a computer and keyboard rather than a telephone." *Id.* at ¶27. There are thousands of different chat rooms available, "in which collectively tens of thousands of users are engaging in conversations on a huge range of subjects." *Id.*

Finally, one of the most well-known methods for communicating information online is the "World Wide Web," which allows users to publish documents, or "web pages," that can then be accessed by any other user in the world. *See generally id.* at 25a-32a, ¶¶33-48. Most web documents contain "links," which are "short sections of text or image which refer to another document." *Id.* at 27a, ¶36. When selected by the user, the "linked" document is automatically displayed, wherever in the world it is actually stored. *Id.* "These links from one computer to another, from one document to another across the Internet, are what unify the web into a single body of knowledge, and what makes the Web unique." *Id.* at 28a, ¶39. Ease of access, the court found, has been the key to the tremendous success of the Web.

In considering the diversity of communication and material available through the online medium, the district court noted that "[i]t is no exaggeration to conclude that the content on the Internet is as diverse as human thought." *Id.* at 42a, ¶73. The diversity of content is possible "because the Internet provides an easy and inexpensive way for a speaker to reach a large audience, potentially of millions." *Id.* at 44a, ¶76. The Internet is thus a "never-ending worldwide conversation," *id.* at 146a (Dalzell, J.), in which users "may speak or listen interchangeably." *Id.* at 46a, ¶79.

2. The Scope Of The CDA's Criminal Prohibitions

In addition to the information described in plaintiffs' declarations, the court found that a wide variety of other

communications with sexual content, or containing vulgar words, would be potentially subject to the CDA. Indeed, the government did not dispute this point: although it attempted to paint the CDA's main target as "pornography," it acknowledged that artistic and political material with serious value could be prosecuted. The government's own witnesses testified that the magazine Vanity Fair, with a nude cover photo of the actress Demi Moore, would be potentially indecent in some communities, Schmidt testimony, Tr. Vol. IV, at 138-39, as would a political discussion that included the sentiment "Fuck the CDA," Olsen testimony, Tr. Vol. V, at 53-53. *See also* J.S.App. 99a (Buckwalter, J.); *id.* at 119a (Dalzell, J.). The court also found that library card catalogues, artworks such Francesco Clemente's "Labyrinth," material from contemporary films such as *Leaving Las Vegas*, and reproductions of ancient Indian sculptures, are all within the CDA's broad proscriptions. *See* J.S.App. 42a-47a, ¶¶74-75, 78, 85; 71a, 76a-77a.

Conversely, while there was no dispute during the preliminary injunction proceedings that some sexually explicit material is available on the Internet, *id.* at 74a, ¶¶82-84, it is not "the primary type of content on this new medium." *Id.* at ¶83. While so-called search engines, used to help computer users find information on the web, "can accidentally retrieve material of a sexual nature through an imprecise search," the court found many factors that decreased the likelihood of such an "accident:"

> A document's title or a description of the document will usually appear before the document itself . . . and in many cases the user will receive detailed information about a site's content before he or she need take the step to access the document. Almost all sexually explicit images are preceded by warnings as to the content. Even the Government's witness, Agent

> Howard Schmidt, Director of the Air Force Office of Special Investigations, testified that the *"odds are slim"* that a user would come across a sexually explicit site by accident.

Id. at ¶88 (emphasis added).

3. The Impracticality Of The Statutory Defenses

After hearing extensive testimony on precisely this issue, the three-judge court found that it is currently impossible for most online speakers to determine who may ultimately read their messages, or to identify and screen out minors from the wide variety of forums over which they may communicate in cyberspace. *See generally id.* 49a-58a, ¶¶90-116. Thus, the court found that "[o]nce a provider posts content on the Internet, it is available to all other Internet users worldwide." *Id.* at 47a, ¶85. Moreover, for the vast areas of cyberspace comprehended by e-mail, mail exploders, newsgroups, and chat rooms, "[t]here is no effective way to determine the identity or the age of a user who is accessing material." *Id.* at 49a, ¶90. The court found that verification of a credit card number over the Internet "is not now technically possible." *Id.* at 53a, ¶97. Off-line credit card verification, in addition to "significantly delay[ing] the retrieval of information on the Internet," *id.* at 54a, ¶101, would impose a significant economic cost on non-commercial entities. For example, Critical Path testified that its web site has been accessed 3,300 times daily. The court concluded that "[i]f Critical Path must pay a fee every time a user initially enters its site, then, to provide free access to its non-commercial site, it would incur a monthly cost far beyond its modest resources." *Id.* at ¶100.

The court acknowledged that the government did offer "very limited evidence" regarding age verification systems on the World Wide Web that are used for accessing "commercial pornography sites"; however, that evidence "was not based on personal knowledge." *Id.* at 55a, ¶103. Moreover, the court found that the burdens imposed by such systems "make them effectively unavailable to a substantial number of Internet content providers." *Id.* at 56a, ¶107. In addition, free and anonymous access to speech on the Internet is often critical, so that requiring payment and proof of identity and age will deter substantial numbers of their audience, both adult and minor, from accessing important and even life-saving communications. *Id.* at 61a, ¶121. In sum, the court found that the "defenses" provided by the CDA under 47 U.S.C. §223(e)(5)(B) -- use of verified credit cards, adult access codes, and the like, to screen out minors -- "are effectively unavailable for non-commercial, not-for-profit entities." *Id.* at ¶122.

The court also found that there is no currently available technology to implement a possible "good faith" defense under §223(e)(5)(A) of the CDA through self-labeling or "tagging" of possibly "indecent" or "offensive" messages. It thus rejected the government's suggestions that a "consensus among speakers" might soon emerge "to use the same tag to label 'indecent' material," and that the industry might develop computer software "that recognizes the tags and takes appropriate action when it notes tagged speech." *Id.* at 57a-58a, ¶¶113-14. The court found these speculations concerning future technological developments insufficient to sustain a law that criminalizes speech today. *Id.* at 58a, ¶114.

Furthermore, the court found, the task of determining which material to tag indecent "would be extremely burdensome for organizations that provide large amounts of material." *Id.* at 57a, ¶110. For example, "[t]he Carnegie Library would be required to hire numerous additional employees to review its online files at an extremely high cost to its limited budget." *Id.* Similarly, "it would be impossible for . . . Critical Path to review all of its material because it has only

one full and one part-time employee." *Id.* The inevitable result, as the court found, is that given the current state of technology, "[m]any speakers who display arguably indecent content on the Internet" -- including political and artistic discussion, and "information regarding protection from AIDS, birth control, or prison rape" -- would have to "choose between silence and the risk of prosecution" if the CDA were not preliminarily enjoined. *Id.* at 61a, ¶¶122-123.

4. The Availability Of Less Restrictive Alternatives That Empower Parents To Make Decisions For Their Own Families

Finally, there is undisputed evidence in the trial record about the variety of voluntary measures available to restrict minors' access to online communications that their parents may consider unsuitable for them. *Id.* at 32a-42a, ¶¶49-73. User-based software that blocks content can be tailored to reflect the parents' values and the age and maturity of the child. As the court found, "[t]he market for this type of software is growing, and there is increasing competition among software providers to provide products." *Id.* at 35a, ¶54. In addition, "America Online, Microsoft Network, and Prodigy all offer parental control options free of charge to their members." *Id.* at 41a, ¶69.

D. The Decision Below

Following the court's findings of fact, all three judges agreed that, given the facts about the online medium, plaintiffs had established a likelihood of success on their claim that the challenged CDA provisions violate the First Amendment because they are substantially overbroad and insufficiently tailored to satisfy strict scrutiny.[11]

Chief Judge Sloviter began her opinion by emphasizing that the CDA was *not* simply a regulatory scheme; instead, "we are dealing with criminal provisions, subjecting violators to substantial penalties." *Id.* at 64a. Rejecting the government's reliance on the statutory defenses to narrow the broad reach of the statute, she noted:

> A wealth of persuasive evidence, referred to in detail in the Findings of Fact, proved that it is either technologically impossible or economically prohibitive for many of the plaintiffs to comply with the CDA without seriously impeding their posting of online material which adults have a constitutional right to access.

Id. at 73a (Sloviter, C.J.); *id.* at 84a (Buckwalter, J.); *id.* at 113a (Dalzell, J.).

Judge Dalzell also noted that "the Supreme Court's First Amendment jurisprudence compels us to consider the special qualities" of the cyberspace medium. *Id.* at 872. As Judge Dalzell explained:

> I . . . have no doubt that a Newspaper Decency Act, passed because Congress discovered that young girls had read a front page article in the New York Times on female genital mutilation in Africa, would be unconstitutional . . . . Nor would a Novel Decency Act, adopted after legislators had seen too many pot-boilers in con-

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[11] Although the judges jointly issued findings of fact and conclusions of law, and agreed that the CDA fails strict scrutiny and is unconstitutionally overbroad, each of the three judges issued a separate opinion. Judge Buckwalter and Judge Sloviter also held that the CDA was unconstitutionally vague; Judge Dalzell disagreed.

> venience store book racks, pass constitutional muster . . . . There is no question that a Village Green Decency Act, the fruit of a Senator's overhearing of a ribald conversation between two adolescent boys on a park bench, would be unconstitutional . . . . A Postal Decency Act, passed because of constituent complaints about unsolicited lingerie catalogues, would also be unconstitutional . . . . In these forms of communication, regulations on the basis of decency simply would not survive First Amendment scrutiny.

Id. at 144a. Judge Dalzell further observed that the Internet is an even more "speech-enhancing medium than print, the village green, or the mails." *Id.* Because the CDA "would necessarily reduce the speech available for adults on the medium," it is "constitutionally intolerable." *Id.*

ARGUMENT

The decision below is so clearly correct under well-established law that this Court need not engage in plenary review.[12] All six federal judges that have reviewed the CDA have concluded that it is unconstitutional. The government itself has indicated that the CDA may be unconstitutional absent the statutory defenses.[13] Indeed, the government has come close to conceding that CDA is *at least in part* unconstitutional even with the defenses.[14]

Summary affirmance is particularly appropriate at this stage of the proceedings because the three-judge court's conclusions were driven by extensive, detailed, and largely undisputed factual findings. These facts establish that there is currently no feasible way to identify and screen minors from access to most areas of the Internet. Consequently, the CDA presently operates as a total ban on "indecent" but constitutionally protected speech, a result clearly foreclosed by this Court's decisions in *Butler v. Michigan*, 352 U.S. 380 (1957), and *Sable Communications v. FCC*, 492 U.S. 115 (1989).

Plaintiffs acknowledge that this case is an important one. But summary disposition is appropriate, even in cases of high import, when the decision below is "so obviously correct as to warrant no further review." Stern, Gressman, Shapiro & Geller, SUPREME COURT PRACTICE at 401. In the present case, this Court's decisions in *Butler*, *Sable*, and *Denver Area Educational Area Television Consortium v. FCC* (*DAETC*) , 518 U.S. __, 116 S.Ct. 2374 (1996), establish without question that a statute imposing what amounts to a criminal ban on a broad range of expression that is constitutionally protected for adults flatly violates the First Amendment.

Finally, summary affirmance is appropriate for prudential reasons. This is the first case presented to the Court that directly addresses the application of traditional free speech principles to the rapidly evolving medium of online

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[12] This Court has stated that "[a] summary disposition affirms only the judgment of the court below, and no more may be read into our action than was essential to sustain that judgment." *Anderson v. Celebrezze*, 460 U.S. 780, 784 n.5 (1983); *see generally* Stern, Gressman, Shapiro & Geller, SUPREME COURT PRACTICE 215-221, §§4.28-4.29 (7th ed. 1993).

[13] *Shea*, 930 F.Supp at 941 ("The Government concedes that §223(d), standing alone, is not constitutionally defensible").

[14] *See* J.S. at 14, noting that §223(d)(1)(B) "raises more difficult questions," and arguing for a narrowing construction "[e]ven if one or more of the CDA's restrictions were unconstitutional in some of their applications . . . ."

communications. Only last Term In *DAETC*, Justice Souter cautiously observed that "[i]n my own ignorance I have to accept the real possibility that 'if we had to decide today . . . just what the First Amendment should mean in cyberspace, we would get it fundamentally wrong.'" *Id.* at 2402, quoting Lessig, "The Path of Cyberlaw," 104 Yale L.J. 1743, 1745 (1995); *see also* 116 S.Ct. at 2403 (O'Connor, J., concurring in part and dissenting in part). Appellees respectfully submit that this Court does not "ha[ve] to decide" that issue today. Instead, it can and should focus on the factual record developed below and, based on that record, summarily affirm.

I. GIVEN THE THREE-JUDGE COURT'S EXTENSIVE, LARGELY UNDISPUTED FACTUAL FINDINGS REGARDING THE TECHNOLOGY AND ECONOMICS OF CYBERSPACE, THE DECISION BELOW IS PLAINLY CORRECT

Plaintiffs recognize that summary affirmance of a lower court order preliminarily enjoining a federal statute would be unusual. It is, nonetheless, fully warranted on this record. As the three-judge court found, because there is no way to shield minors alone from online "indecency" in the vast majority of contexts, the CDA amounts to a criminal ban on constitutionally protected communication among adults. This Court has frequently held that a statute that reduces adults to reading and seeing only what is fit for children cannot be sustained under the First Amendment.

Indeed, this Court has *never* upheld a *criminal* ban on indecent speech, even under the guise of protecting children. *See Butler*, 352 U.S. 380 (invalidating a conviction for distribution of indecent publications); *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 74 (1983)(striking down a ban

on mail advertisements for contraceptives because "[t]he level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox"); *Interstate Circuit, Inc. v. Dallas*, 390 U.S. 676 (1968)(invalidating ordinance banning sexually explicit motion pictures); *FCC v. Pacifica Foundation*, 438 U.S. at 750 (upholding noncriminal time-channeling rules against indecency in broadcast); *Sable Communications v. FCC*, 492 U.S. at 128 (striking down indecency ban in phone communications); *DAETC v. FCC*, 116 S.Ct. 2374 (striking down two of three indecency regulations for cable television, and upholding permissive regulation that allows, but does not require, broadcasters to ban indecency from leased access channels).

The government cannot persuasively challenge the lower court's findings, and has not attempted to do so. Nor has it asked this Court to reverse any of its well-established First Amendment rules. To the contrary, the government does not quarrel with the legal standard -- strict scrutiny -- used by lower court in this case. J.S. at 15; *see also* J.S. App. 67a. On this record, therefore, the government has failed to present the Court with any substantial constitutional issue to resolve.

Before the three-judge court, the government's effort to avoid the seemingly inescapable conclusion that the CDA is unconstitutional under *Butler* and its progeny rested entirely on its proposition that some of the CDA "safe harbor" defenses might work, at least some of the time, for some cyberspace speakers. The trial court finding that those defenses were not technologically or economically available for the vast majority of online content providers, including most of the plaintiffs, effectively disposes of that argument in this Court. *See generally* pp.12-14, *supra*. Specifically, the lower court found that §223(e)(5)(B)'s credit card and age verification defenses were effectively unavailable for the vast majority of communications and speakers in cyber-

space. As to the "good faith" provision of §223(e)(5)(A), the lower court found that the government's proposal that "tagging" or self-rating might provide a defense is "purely hypothetical and offers no currently operative defense to Internet content providers." *Id.* at 79a (Sloviter, J.).

In addition to the findings establishing the technical infeasibility and economic burden of the defenses, many other factors supported the trial court's conclusion that the CDA is not the least restrictive means of accomplishing the government's asserted compelling interest in protecting the physical and psychological well-being of minors. First, the court held that the global nature of the medium made the CDA an imprecise and ineffective tool for achieving the government's purpose:

> [T]he CDA will almost certainly fail to accomplish the Government's interest in shielding children from pornography on the Internet. Nearly half of Internet communications originate outside the United States, and some percentage of that figure represents pornography. Pornography from, say, Amsterdam will be no less appealing to a child on the Internet than pornography from New York City, and residents of Amsterdam have little incentive to comply with the CDA.

Id. at 882 (Dalzell, J.).

Second, in contrast to the facts establishing the ineffectiveness of the CDA, the preliminary injunction record is replete with evidence of alternative means of accomplishing the government's purpose *more* efficiently and *less* restrictively than through an outright criminal ban -- for example, through parental use of blocking software and the development of additional mechanisms for screening content on a voluntary basis. *See generally* pp.14, *supra*. In addition,

"[t]he Government can continue to protect children from pornography on the Internet through vigorous enforcement of existing laws criminalizing obscenity and child pornography." J.S.App. 145a (Dalzell, J.).

Third, as Judge Sloviter noted, it is unclear on this record that the government has a compelling interest in blocking all minors' access to all online communications that would fit within the CDA's capacious "indecency" and "patent offensiveness" standards. *Id.* at 72a. Judge Sloviter thus questioned whether the government had met its burden of justifying restrictions so broad that it could well become criminal in many communities to permit older teenagers online access to the hit play "Angels in America," news articles on female genital mutilation, or safer sex information. *Id.* at 70a. Under these facts, the CDA clearly fails strict scrutiny, which demands that "the benefit gained [by a content-based restriction] must outweigh the loss of constitutionally protected rights." *Elrod v. Burns*, 427 U.S. 347, 363 (1976).

The Court's ruling last Term in *DAETC* fully supports this conclusion. No Justice in that case questioned the continued vitality of the principles set forth in *Butler* and *Sable*. To the contrary, the Court explicitly followed *Butler* and *Sable* in invalidating the only portion of the 1992 Cable Act[15] which (like the CDA) *mandated* censorship: the requirement in §10(b) of the Act that "indecent" programming on leased access channels be scrambled until subscribers requested unscrambling. Even though the §10(b) restriction was far less draconian than the criminal penalties under the CDA, it was unconstitutional because the government had not met its burden of demonstrating that mandated

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[15] Cable Television Consumer Protection and Competition Act of 1992, 106 Stat. 1486, 47 U.S.C. §532.

scrambling was the least burdensome means available to accomplish its goal of protecting minors. 116 S.Ct. at 2390-2394 (plurality opinion); *id.* at 2396-97 (Kennedy & Ginsburg, JJ., concurring in part and dissenting in part). As Justice Breyer wrote for the plurality:

> No provision, we concede, short of an absolute ban, can offer certain protection against assault by a determined child. We have not, however, generally allowed this fact alone to justify "reduc[ing] the adult population . . . to . . . only what is fit for children."

Id. at 2393, quoting *Sable*, 492 U.S. at 128; *Bolger v. Youngs Drug Products Corp.*, 463 U.S. at 73, and *Butler*, 352 U.S. at 383.

In striking down the mandatory provision, the *DAETC* plurality considered the "benefits [the requirement] is likely to achieve," noting that "where, as here, the record before Congress . . . provides no convincing explanation, this Court has not been willing to stretch the limits of the plausible . . . in order to justify laws that impose significant restrictions upon speech." 116 S.Ct. at 2394. Because of the global nature of the online medium, the CDA is even less effective than the mandatory scrambling provisions of the Cable Act struck down by the Court in *DAETC*, thus warranting summary affirmance of the preliminary injunction in this case.

Of the other Cable Act provisions at issue in the *DAETC* case, the Court invalidated §10(c)(permitting cable operators to forbid indecency on public access channels), and upheld §10(a)(giving operators similar control over leased access programming). Both provisions were permissive; no government *mandate* -- much less a criminalization of protected speech -- was at issue. Even so,

§10(c) failed to satisfy First Amendment standards.[16]

The *DAETC* plurality also reaffirmed the principle that the particular qualities of the medium must be considered in determining the appropriate level of First Amendment protection. Justice Souter wrote, "Our indecency cases since *Pacifica* have likewise turned as much on the context or medium of the speech as on its content." *Id.* at 2401 n.2. In *Sable*, for example, the challenged ban on indecency was struck down in part because it "involved a communications medium, telephone service, that was significantly less likely to expose children to banned material, was less intrusive, and allowed for significantly more control over what comes in the home." *See* 116 S.Ct. at 2388 (Breyer, J.). Even in the cable television context, Justices Thomas, Rehnquist, and Scalia had no doubt in *DAETC* that "under our current jurisprudence, Congress could not impose a total ban on the transmission of indecent programming." *Id.* at 2423, citing *Sable*, 492 U.S. at 127. *A fortiori*, then, certainly the government cannot justify a complete ban in the even less invasive, and more empowering, technology of the Internet. Yet that is exactly what Congress accomplished in the CDA -- a

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[16] Section 10(a) was upheld in large part because the First Amendment interests of cable operators were enhanced by returning to them some measure of editorial control over leased access channels. *DAETC*, 116 S.Ct. at 2385-87. In dissenting from the plurality's striking of §10(b) and §10(c), Justices Thomas, Rehnquist, and Scalia rejected a First Amendment jurisprudence that was less protective of the electronic than of the print media, agreed with Justices Kennedy and Ginsburg that strict scrutiny was appropriate, and only differed with the other Justices as to the relative strengths of the competing free speech interests asserted by cable programmers and cable operators. 116 S.Ct. at 2422, 2429. In the present case, it is difficult to draw lines between speakers and content providers, Internet Service Providers, and listeners on the Internet, since many users engage in several roles simultaneously. More importantly, the CDA does not enhance (or restore) anyone's free speech rights.

criminal ban on speech in the most democratizing and unintrusive medium that the world has yet created.

Thus, the application of clear legal principles to the factual findings regarding the online medium supports summary affirmance in this case.

II. NONE OF THE GOVERNMENT'S OTHER ARGUMENTS JUSTIFY NOTING PROBABLE JURISDICTION AT THIS STAGE OF THE PROCEEDINGS

In its jurisdictional statement, the government fails to raise any legitimate argument *against* summary affirmance. First, as discussed above, the government's argument that the overbreadth of the CDA is not "substantial," J.S. at 21-25, does not comport with the facts.[17]

Second, to cure the obvious overbreadth of the CDA, the government suggests that the trial court should have upheld §223(d)'s display provision to the extent that it applies to "commercial Web sites." J.S. at 26. But the trial court in this case and in the *Shea* case correctly declined to perform such "radical surgery." *Shea*, 930 F.Supp. at 923. As Judge Sloviter wrote: "It is clear from the face of the CDA and from its legislative history that Congress did not intend to limit its application to commercial purveyors of pornography." J.S.App. 75a; *see also* H.R.Rep.No. 458, 104th Cong., 2d Sess. 113, 191 (1996). Among other things, Congress intentionally banned material under the CDA that *lacks* prurient appeal and that *has* serious value. Thus, narrowing the CDA's application to "commercial web sites" would ban

[17] *See generally* pp.12-14, *supra*. *See also* the ALA Plaintiffs' Response to the Government's Jurisdictional Statement for a discussion of the government's misstatement of the factual record.

not only "commercial pornographers" from the Internet, but would criminalize "a broad range of material from contemporary films, plays and books showing or describing sexual activities . . . to controversial art and photographs."[18] J.S.App. at 76a-77a. In addition, given the explicit application of the statute to libraries and educational institutions, the government's suggestion would require more than creative re-drafting. *See* §230(e)(2); §223(f)(a). The *Shea* court similarly declined the invitation "to usurp Congress' legislative functions" with an interpretation that "fl[ies] in the face of a clear congressional intent to apply the statute's proscriptions to commercial and non-commercial content providers alike." 930 F.Supp. at 949-50.

Third, the government creates a smokescreen to hide the overwhelming unconstitutionality of all of the CDA's provisions by attempting to distinguish §223(a)(1)(B) and §223 (d)(1)(A) from §223(d)(1)(B). J.S. at 20-21. For several reasons, the smokescreen should not divert the Court. Most significantly, the government did not present the argument below. *See Holly Farms Corp. v. NLRB*, 517 U.S. __, 116 S.Ct. 1396, 1402 n.7 (1996)(declining to entertain argument that petitioners had failed to advance previously, because the Court "generally do[es] not address arguments that were not the basis for the decision below"), quoting *Matsushita Elec. Industrial Co. v. Epstein*, 516 U.S. __, 116 S.Ct. 873 n.5 (1996). Until it reached this Court, the government never suggested that any of the CDA's provisions would apply

[18] Nor, said Judge Sloviter, could the statute's overbreadth be cured by the government's suggestion that it probably would not prosecute "works of serious literary or artistic merit," for that would "require a broad trust indeed from a generation of judges not far removed from the attacks on James Joyce's ULYSSES as obscene . . . . The bottom line is that the First Amendment should not be interpreted to require us to entrust the protection it affords to the judgment of prosecutors." *Id.* at 83a.

only to the direct and intentional communication of indecency to a specific person known to be a minor. To the contrary, both the government and the plaintiffs proceeded below on the assumption that each of the challenged provisions in the CDA applied to all online communications that might be seen by any minor. The government therefore relied on "safe harbor" defenses that the district court found to be constitutionally inadequate. The government's disappointment with those findings does not permit it to reinterpret the statute on appeal.

In any event, the government's effort to draw distinctions between the challenged provisions of the CDA is not supported by a fair reading of the statute when viewed as a whole. Section 223(a)(1)(B) and §223(d)(1)(A) suffer from the same *Butler* and *Sable* problems of overbreadth that are fatal to §223(d)(1)(B)'s "display" provision. Every online speaker in the publicly accessible areas of cyberspace (including the World Wide Web, newsgroups, mailing lists, and chat rooms) would have to reduce his or her speech to that which is suitable only for minors in order to avoid criminal penalties under any of the provisions. Specifically, §223(d)(1)(A) makes it a crime to "knowingly use[] an interactive computer service to send to a specific person or persons under 18 years of age" any material that is "patently offensive." It does *not* require that the defendant "know" that the recipient is a minor, but rather only requires that the defendant "knowingly use[] an interactive computer service." Thus, *any* use of an interactive computer service to communicate in the vast public areas of cyberspace could result in the sending of "patently offensive" material "to a specific person . . . under 18." Similarly, §223(a)(1)(B) makes it a crime to "make[], create[], or solicit[], and initiate[] the transmission of" any indecent material "knowing that the recipient of the communication is under 18 years of age." The user "knows" that minors have access to the vast public

portions of cyberspace; thus, the user risks prosecution under §223(a)(1)(B) because simply by speaking in these spaces the user may have knowingly "initiat[ed] the transmission" of indecent material to a person under eighteen.

Moreover, Congress clearly applied the "safe harbor" defenses of §223(e)(5) to all three provisions of the CDA.[19] If §223(a)(1)(B) and §223(d)(1)(A) were meant to apply only to persons who intentionally communicated indecent or patently offensive material to a particular person they knew to be a minor, it would be nonsensical for such defendants to assert §223(e)(5)(A)'s "good faith" defense, or §223(e)(5)(B)'s "verified credit card" defense, to avoid prosecution.[20] Thus, contrary to the government's new interpretation in its Jurisdictional Statement, *all three provisions* of the CDA potentially affect communications between adults, and will have a serious chilling effect on online communication.[21]

The fourth argument the government makes for plenary review is that the Court should take the case to consider whether the CDA is unconstitutionally vague. J.S.App. 86a-87a (Buckwalter, J.); *id.* at 80a (Sloviter, C.J.). But the

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[19] Section 223(e)(5) provides "a defense to a prosecution *under subsection (a)(1)(B) or (d)*" (emphasis added).

[20] In addition, the problem of coercion and enticement of minors via computer, which would appear to be the rationale for any provision covering intentional communications to minors, was already covered elsewhere in the CDA, at §508, codified at 18 U.S.C. §2422(b). Plaintiffs do not challenge that provision.

[21] The government's new argument also ignores the scope of the "indecency" and "patently offensive" prohibitions, which includes a vast amount of material that has social value -- indeed, that may be life-saving -- for older minors. *See generally* pp.4-7 & n.7, 10-12, *supra*, and Appendix.

Court may summarily affirm without reaching the vagueness issue. It was the CDA's overbreadth and its failure to meet strict scrutiny that was the dispositive issue both in this case and in *Shea*. In addition, as discussed above, given the new and evolving medium of cyberspace, it may be premature for the Court to rule on whether, in the context of the online medium, the "indecency" and "patently offensive" provisions provide adequate guidance for millions of speakers to avoid criminal prosecution.[22]

Finaliy, the government argues that plenary review is appropriate because "[i]n light of the rapid development and innovative capabilities of all components of the Internet industry, there is every reason to expect that technological steps will occur swiftly if the CDA's indecency restrictions are upheld." But, as Judge Sloviter wrote, "I can imagine few arguments less likely to persuade a court to uphold a criminal statute than one that depends on future technology." J.S.App. 82a. In addition, the expansion of existing industry alternatives to empower parents to control Internet content -- rather than somehow legitimizing the CDA -- merely illustrates that less restrictive alternatives to the CDA's draconian ban are clearly available and, therefore, as the trial court correctly held, the CDA fails strict scrutiny.

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[22] *See generally* pp.4-7, *supra*. Contrary to the government's assertion, however, the vagueness holding of the lower court is not precluded by this Court's decisions in *DAETC*. Unlike the CDA, the statute at issue in that case did not impose criminal sanctions, involved an entirely different medium, and did not raise questions about the viability of applying local community standards in a global medium. As Judge Buckwalter pointed out, "In statutes that break into relatively new areas, such as this one, the need for definition of terms is greater, because even commonly understood terms may have different connotations or parameters in this new context." J.S.App. 101a.

CONCLUSION

For the reasons stated above, the ACLU appellees respectfully move for summary affirmance of the preliminary injunction entered by the three-judge district court.

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APPENDIX

THE PARTIES' STIPULATIONS IN PREPARATION FOR THE PRELIMINARY INJUNCTION HEARING

* * * * *

II. *ACLU v. RENO* PLAINTIFFS AND THE CONTENT OF THEIR SPEECH

A. AMERICAN CIVIL LIBERTIES UNION

70. The American Civil Liberties Union (ACLU) is a nationwide, nonpartisan organization of nearly 300,000 members that describes itself as dedicated to defending the principles of liberty and equality embodied in the Bill of Rights. The ACLU is incorporated in District of Columbia and has its principal place of business in New York City.

71. In addition to its legal advocacy, the ACLU devotes considerable resources to advising the public as to its views concerning civil liberties. Since 1993, the ACLU's public education efforts have included extensive online resources that offer electronic copies of ACLU publications, reports, court briefs, news releases, and other material related to the ACLU's legal, legislative, educational and advocacy work. The ACLU's online resources also include interactive discussion groups, chat rooms, and special online events that allow users to discuss and debate a variety of civil liberties issues.

72. The National Office of the ACLU maintains its public online resources through two separate online services, America Online (AOL) and the Internet's World Wide Web. The ACLU has a contract with America Online (AOL) to provide online resources through the AOL online service. The ACLU has a separate contract with New Media Publishing, Inc. to provide online resources through the Internet's World Wide Web. The AOL site offers interactive discussion groups, chat rooms, and special online events that are not

offered through the Internet site. Otherwise, the material offered through the two services is substantively the same.

73. In 1995, the ACLU posted hundreds of separate documents to its America Online site, and it expects to increase the number of online publications in 1996 on both the AOL site and the web site.

74. The Public Education Department of the ACLU's National Office in New York, New York creates and formats ACLU information for both the America Online site and the Internet site. Using electronic mail, the ACLU's affiliate offices in all fifty states forward relevant information to the ACLU's Public Education Department to be included in the ACLU's online resources.

75. While the ACLU's online resources on America Online are physically located in computers owned and maintained by America Online, Inc. of Vienna, Virginia, the ACLU has editorial control over the site by contract. Only AOL subscribers can access the ACLU information on the AOL system.

76. While the ACLU's online resources on the Internet web site are physically located in computers owned and maintained by New Media Publishing of Falls Church, Virginia, the ACLU has editorial control over the site by contract. All online subscribers that have access to the Internet can access the ACLU's web site.

77. In addition to the Internet web site and the America Online site maintained by the ACLU's Public Education Department at the National Office, many ACLU affiliate offices provide their own online resources through separate service providers. Many of the ACLU's fifty state affiliate offices have established their own web pages, usually through a service provider in their own state. The National Office web site creates links to these affiliate web sites, but the affiliate web site information is physically stored on

various computers depending upon the service provider used by the state affiliate office.

78. The ACLU is involved in cases and advocacy regarding what it describes as "arts censorship, obscenity law and indecency law, discrimination against gays and lesbians, and reproductive freedom." The ACLU has posted the text of the famous "Seven Dirty Words" comic monologue which was at issue in the 1978 *FCC v. Pacifica* case. The ACLU has an online feature that allows users to guess what the famous "seven dirty words" are. The ACLU allows the user to access the correct answer by reading the Court decision or the ACLU's brief in the case. In honor of its recent 75th anniversary, the ACLU also published a list entitled "The ACLU's 75 Greatest Hits" that documents the ACLU's involvement in 75 United State Supreme Court cases. The online version of the list includes the text of the brief that the ACLU filed for each case with the Supreme Court. The brief the ACLU submitted in *Cohen v. California*, a case concerning a man who wore a jacket that bore the words, "Fuck the draft," while walking through a courthouse corridor, is available on ACLU's online resources. In addition, the ACLU's online resources include a trial court opinion in *U.S. v. Jake Baker*, a federal district court case concerning a student who was prosecuted for posting certain online fictional stories and messages. The opinion quotes from the defendant's postings.

79. The ACLU's Internet sites also provide links to other Internet sites as a resource for online users. For example, when accessing an ACLU online file on civil liberties in cyberspace, the ACLU site provides a link so that the user can "jump" to a related site hosted by the Electronic Frontier Foundation. In turn, EFF's site provides further links to additional online sites that deal with the subject.

80. The ACLU's site on America Online also hosts unmod-

erated online discussion groups that allow citizens to discuss and debate a variety of civil liberties issues. These include a "free speech zone," in which users can simultaneously chat online about current issues; the "Bill of Rights bulletin board," an online bulletin board that allows users to post messages on particular civil liberties topics; and live "auditorium" events, in which a featured speaker "talks" online on a particular issue and users can respond simultaneously with online questions. Past speakers have included Camille Paglia (academic and commentator on "sexual politics") and Harvey Fierstein (actor and gay rights activist). The ACLU's Public Education Department changes the online topics frequently to address current civil liberties issues. Users are also permitted to create bulletin board topics of their own choice. For example, users of the ACLU site on AOL have discussed the content of Howard Stern's best-selling book, *Private Parts*; masturbation, in the context of the firing of Jocelyn Elders; discussions of the word "fuck"; and discussions of First Amendment issues regarding pornography. See ACLU exhibits in the ACLU Plaintiffs' exhibit books.

81. The ACLU does not moderate its online discussion groups.

82. In addition to its public online resources, the ACLU leases space on American Online that may be accessed by ACLU staff but not by other America Online subscribers. The AOL space allows ACLU staff and members to exchange documents and information on bulletin boards and through e-mail. ACLU staff and members also use other online services (sometimes through America Online, and sometimes through other Internet Service Providers) that include e-mail, online mailing lists and discussion groups, and bulletin board systems. Some of these communications also concern the matters indicated in ¶ 9 *supra*.

83. Many ACLU staff and members receive requests for information by e-mail messages. Some of these communications also concern the matters indicated in ¶ 9 *supra*. The ACLU does not currently verify the age of the person requesting the information.

84. Many of the ACLU's nearly 300,000 members use online communications. They both receive and transmit information across the range of online communications.

B. HUMAN RIGHTS WATCH (HRW)

85. Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. Human Rights Watch is supported by contributions from private individuals and foundations worldwide. It accepts no government funding. Human Rights Watch has offices and staff around the world and is incorporated in New York state.

86. Human Rights Watch staff investigate human rights abuses around the world. A growing number of its field investigators are using the Internet, including electronic mail (e-mail), to communicate with other staff, human rights activists and dissidents. Human Rights Watch transmits reports electronically using local phone lines.

87. Human Rights Watch staff use e-mail to communicate with each other, particularly when staff are located abroad or at a distance from its offices. These communications often concern its research, including research on sexual abuses. The staff has sent testimonies, eyewitness accounts, and reports on abuse via e-mail on topics such as the trafficking of women as sex workers and sexual torture.

88. Human Rights Watch also maintains a gopher Internet site, accessible to anyone at gopher://gopher.humanrights.

org:5000. Gopher is a "menu-driven" Internet system. As of January, 1996, this gopher site contained approximately 325 Human Rights Watch press releases and excerpts of reports, with most of these documents consisting of 2-3 pages of text. These materials as well as additional ones not available on-line are also available in print form.

89. Human Rights Watch reports concern facts on the situation of human rights abuses in the specific country or region and eyewitness accounts of abuses. Some of the accounts concern torture, rape, mutilation, execution, and mass murder.

90. HRW's July, 1995 press release on slavery in Pakistan is posted at its gopher site. A March 1995 press release on abuses by Nigerian security forces in Ogoniland is also posted at its gopher site. Its October 1993 report on the abuse of Burmese refugees from Arakan is posted on the newsgroup reg.seasia. See HRW exhibits in ACLU Plaintiffs' exhibit book.

91. In addition to its gopher site, many of its staff around the world access Internet newsgroups or subscribe to electronic mailing lists called listervs that discuss human rights abuses or expose possible abuses. One of the issues investigated by the Human Rights Watch staff is the sexual exploitation of women. Staff members access newsgroups such as reg.seasia, reg.indonesia and reg.sasia in order to track human rights issues in Asia. See HRW exhibits.

92. Human Rights Watch seeks to educate the public about human rights abuses around the world. Human Rights Watch reports include references to sexual and violent abuse.

C. ELECTRONIC PRIVACY INFORMATION CENTER

93. The Electronic Privacy Information Center (EPIC) describes itself as a non-profit research organization that col-

lects and disseminates information concerning civil liberties and privacy issues arising in new electronic communications media.

94. Created in 1994, EPIC is a project of the Fund for Constitutional Government (FCG), a publicly supported, charitable, nonprofit corporation incorporated in the District of Columbia. FCG, established in 1974, describes itself as dedicated to protecting civil liberties and constitutional rights. Both EPIC and FCG have their principal places of business in Washington, DC.

95. EPIC's public education efforts include the maintenance of extensive online resources that offer electronic copies of EPIC publications, reports, court briefs, news releases, international treaties, U.S. government documents obtained under the Freedom of Information Act, and other materials related to EPIC's educational work.

96. EPIC maintains its public online resources through a "site" on the Internet's World Wide Web, and through a "listserver" mailing list, which EPIC makes available to anyone with an Internet electronic mail address.

97. The resources available on EPIC's web site reside on a computer system physically located within EPIC's offices in Washington, DC, accessible through computers that have access to the Internet.

98. EPIC's electronic resources include materials concerning free speech and privacy issues. For example, the EPIC Web site contains the text of the U.S. Supreme Court's opinion in *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726 (1978), in which the Court reproduced the so-called "seven dirty words" monologue as an appendix to its opinion. The Web site also contains the text of the Supreme Court's opinion in *Cohen v. California*, 403 U.S. 15 (1971), concerning the conviction of a man for

wearing a jacket that bore the words, "Fuck the draft."

99. EPIC's Web site also contains a section entitled "Internet Censorship." The materials available in this area include the text of the Communications Decency Act and other related legislation. Also included is the text of poems written by subscribers of the America Online (AOL) service and removed from that system by AOL management. See EPIC exhibits in ACLU Plaintiffs' exhibit book. The "Internet Censorship" area also contains a list of Usenet newsgroups that temporarily were removed from the Compuserve system, reportedly in response to German government requests.

D. ELECTRONIC FRONTIER FOUNDATION (EFF)

100. The Electronic Frontier Foundation is a nationwide, nonpartisan organization of approximately 3,500 paying individual members that describes itself as committed to defending civil liberties in the world of computer communications, to developing a sound legal framework for that world, and to educating government, journalists, and the general public about the legal and social issues raised by this new medium. The EFF is incorporated in State of California, and has its principal place of business in San Francisco.

101. Since its inception in 1990, the EFF has devoted resources to advising the public as to EFF's views concerning civil liberties and other legal issues as they arise in cyberspace. Throughout EFF's existence, it has initiated and/or moderated several online forums, including a forum on the WELL (a California-based conferencing system and Internet Service Provider), on Usenet (the newsgroups comp.org.eff.talk and comp.org.eff.news), and on America OnLine. These forums are primarily interactive discussion groups, but EFF representatives also frequently participate in chat rooms, and in special online events that allow users to discuss and debate a variety of legal and constitutional issues.

102. In addition, EFF has its own computer site on the Internet, and its name (sometimes referred to a "domain name") is "eff.org". EFF's public-education efforts include the maintaining of extensive online resources both on the forums it runs with online service providers, and on its own Internet site. These resources include articles, court cases, legal papers, news releases, newsletters, and excerpts from public discussions related to the EFF's legal, legislative, educational and advocacy work. EFF also maintains a "home page" on the World Wide Web, accessible through computers that have access to the Internet.

103. EFF also maintains eight online mailing lists, both for specific civil-liberties issues and for informing the public about its activities.

104. EFF's Web site and many of its online resources are based on a computer in San Francisco, accessible through computers that have access to the Internet. The EFF resources and forums that are maintained on the WELL, on America OnLine, and on other commercial online forums are accessible through those systems. The material EFF makes available on America Online and other commercial service providers is subject to the Terms of Service of those providers' subscription contracts.

105. EFF advises individuals and groups about issues concerning legal rights and responsibilities in the online world. In addition, EFF advocates positions, and promotes discussions, about what those rights and responsibilities should be. For example, EFF has published in several forums a discussion of the Supreme Court's decision in *FCC v. Pacifica* and its progeny concerning the definition of the term "indecency." In discussing the issue of "indecency," EFF refers in detail to such texts as the George Carlin comedy monologue that is the subject of the litigation in *Pacifica*, to the transcripts of Howard Stern broadcasts, and to literary works such as those of Allen Ginsberg and James Joyce. EFF's

Web site also provides "links" that enable users to visit other sites that contain discussions and examples as described in this paragraph. See EFF exhibits in ACLU Plaintiffs' exhibit book.

106. Most of EFF's approximately 3,500 members use online communications. They both receive and transmit information across the range of online communications.

E. JOURNALISM EDUCATION ASSOCIATION (JEA)

107. The Journalism Education Association is a national organization of high school journalism teachers and publication advisors. Formed in 1924, JEA is incorporated in Minnesota and has its headquarters in Manhattan, Kansas. It has almost 1600 individual members who reside throughout the country.

108. JEA was formed in 1924 to serve journalism educators through supporting student expression, creating aids for curriculum and instruction, facilitating the involvement of minority students, promoting the use of technology, and emphasizing professionalism through certification, workshops, conventions, and publications.

109. Many JEA members are high school journalism teachers. JEA members use online communications as part of a course of instruction in high school journalism classes. JEA members who are teachers instruct students in the classroom, for example, on use of online communications for news gathering and journalistic research. JEA members who are teachers also authorize students to conduct their own online research using school computers either in the classroom or on their own time in school computer labs.

110. Some students of JEA members have access at school to online communications about a range of subjects.

111. Many JEA members are publication advisors for high school student newspapers. JEA members who are publication advisors authorize students to use school computers to conduct their own online research for student publications.

112. An increasing number of JEA members are advisors for online student publications. These JEA members instruct students on online publishing techniques and authorize students to use school computers to publish their own online newspapers.

113. One JEA member recently assisted a student with online research for an article on media images of women. The search led to online sites that contained graphic information and pictures, including depictions of violence against women, and including pornographic images of women. See JEA exhibits in ACLU Plaintiffs' exhibit book.

F. COMPUTER PROFESSIONALS FOR SOCIAL RESPONSIBILITY

114. Computer Professionals for Social Responsibility (CPSR) is a non-profit 501(c)(3) corporation founded in 1981 and incorporated in the state of California since 1983. Its national office is located in Palo Alto, California. CPSR is a national membership organization with 22 chapters located in 14 states. As of February, 1996, CPSR has approximately 1,550 members.

115. CPSR describes itself as a public-interest alliance interested in the impact of computer technology on society. CPSR members provide the public and policy makers with their opinions about the power, promise, and limitations of computer technology. CPSR also directs public attention to issues concerning the application of computing. Membership is open to anyone who uses or is concerned about the role of information technology in our society.

116. The National CPSR Web home page was established

in April 1994. CPSR uses Internet servers of Sunnyside Computing, located in Palo Alto, California for its Internet services. Its Web page address is http://www.cpsr.org/home.html. This home page contains official CPSR documents analyzing such issues as government policies concerning the Internet, encryption issues, and health issues raised by working in the computer industry. Currently, documents include reports issued by CPSR and relevant foundations, Op-Ed pieces and information about how to get involved with CPSR and other related computer advocacy organizations.

117. CPSR sponsors a number of working groups, comprised of members and other invited people who work together to develop ideas, issues, conversations, actions and projects that relate to CPSR's mission.

118. The various CPSR working groups and projects maintain their pages autonomously; any documents or links from these autonomous Web pages are included at the discretion of each group's members. Like the main CPSR Web page, these independent CPSR Web pages are linked, indirectly, to issues the group or project decides are relevant.

119. In addition, most of these Web pages contain archives on previous newsgroup or listserv discussions. CPSR Web pages contain information regarding gender issues, sexuality and abortion.

120. CPSR sponsors nearly 20 listservs which it makes available to anyone with an Internet electronic mail address. Listservs are electronic mailing lists in which any subscriber messages are posted to other members of the mailing list. A number of the listservs are moderated, with moderators screening messages for relevancy to the topic and discussion of the listserv.

121. CPSR's Campaign for Cyber-Rights working group established in the beginning of 1995, describes itself as seeking to raise awareness of issues surrounding the commercial

development of "cyberspace." The Cyber-Rights working group sponsors a Cyberjournal, a moderated listserv and a general discussion list on global political trends that are relevant to cyberspace. Cyber-rights maintains an extensive archive, located at http://www.cpsr.org/cpsr/nii/cyber-rights/.

122. Several postings on the Cyber-rights listserv include references to racial or ethnic slurs and depictions of body parts and functions. See CPSR exhibits in ACLU Plaintiffs' exhibit book.

G. NATIONAL WRITERS UNION (NWU)

123. The NWU is a trade union for freelance writers that is registered in New York as an unincorporated non-profit organization and affiliated with the AFL-CIO through the union's membership in the UAW. Its members include technical writers, journalists, book authors, poets, novelists, ghostwriters, corporate writers, cartoonists, and other active writers. The NWU has over 4,000 members nationwide.

124. The NWU uses the Internet extensively to communicate with its members and discuss and publish their writing and receive a response. It maintains a number of Internet services, such as an Internet World Wide Web page, a file transfer protocol (ftp) site and listservs.

125. Since July, 1995, the NWU has operated a Web site whose home page, which has a table of contents, is located at http://www.nwu.org/nwu/, accessible through computers that have access to the Internet. The server for this Web site is located in San Francisco, California and is operated by Labornet.

126. NWU controls the contents of its Web site. NWU currently does not allow members to add links from the NWU Web site to their own Internet sites. Some members have linked their own Web pages to the NWU Web page,

however.

127. The NWU Web page does not require any form of registration or payment to access.

128. The NWU ftp site located at ftp://ftp.netcom/nw/nwu allows users to download available NWU documents online. The ftp site currently contains 25 documents, which total approximately 243 pages of text. The ftp site is operated by Netcom, an Internet server company with computers located around the country. Just as with the Web page, all documents available via ftp are products of national and local NWU committees, campaigns, and boards. The personal work of union members are not posted.

129. NWU's "PIC Newsletter" contains discussions of issues relating to the arts, for example, a discussion of Andres Serrano's photograph, "Piss Christ."

130. NWU members also communicate by subscribing to NWU's listservs, "nwu-chat" and "nwu-queer," both of which are also open to non-members. See NWU exhibits in ACLU Plaintiffs' exhibit book.

131. "NWU-queer" is for writers who are gay, lesbian, bisexual, or "transgendered," their colleagues and all other working writers covering the issue of sexual orientation. Topics addressed include jobs, politics, spirituality, activism, health, and erotica. NWU-queer currently has 150 subscribers.

132. "NWU-chat," which currently has 250 subscribers, is a forum for information relating to writing or the publishing industry. The listserv's main topics concern "writers' rights" (especially regarding the electronic media and copyright in general) and practical considerations such as where to get ertain works published. It also discusses other topics such as free speech and the imprisonment of political dissidents.

133. Although the listservs are not moderated, NWU does have guidelines on participation.

134. A number of NWU members maintain their own Web pages. The contents of these Web pages are varied: some members advertise their writing services, publish their works, provide information about the NWU, or discuss political issues important to them as writers. Most of these sites contain both graphical and textual material.

H. CLARINET COMMUNICATIONS CORP.

135. ClariNet is a privately held California corporation formed in 1991 and located in San Jose that publishes electronic information of different types.

136. Among ClariNet's publications is an electronic newspaper entitled the "ClariNet e.News." The newspaper provides subscribers with online news, sports, financial information, and other reading material on a variety of topics. The newspaper is distributed in Usenet format to approximately 1.2 million paying subscribers. With a few exceptions, the newspaper is not sold directly to individuals but is available through Internet service providers who provide the newspaper as part of their basic service and through educational institutions and corporations.

137. The news articles in ClariNet e.news are taken from the same wire services from which print newspapers obtain their stories. ClariNet has occasionally published articles that use four letter words. It has also occasionally published articles that explicitly describe rapes and sexual assaults.

138. ClariNet also publishes a humor newsgroup in Usenet format at rec.humor.funny and on the World Wide Web. Although many people submit jokes, the humor section is moderated for quality. Two daily jokes are distributed and all of the jokes are archived. Some of the jokes discuss sexual acts including oral sex. Some jokes also use strong

language. Where ClariNet deems it appropriate, jokes are accompanied by a disclaimer stating that they may not be suitable for minors. See ClariNet exhibits in ACLU Plaintiffs' exhibit book.

139. Both the newspaper and the humor newsgroup allow readers to link to other sites.

I. INSTITUTE FOR GLOBAL COMMUNICATIONS

140. The Institute for Global Communications (IGC) is a national computer service provider that offers access to the Internet, as well as other on-line services. Created in 1986, IGC is the project of a California public charity that has its central office in San Francisco, California.

141. IGC describes itself as aiming to offer high quality, low-cost computer networking services and Internet access, primarily to non-profit organizations. The IGC networks have functioned as means of communication for many non-profit organizations nationwide. IGC also trains non-profits in how to use computer communications to more effectively carry out their programs. Most of the non-profits work in the areas of human rights, women's rights, environmental issues, labor, and conflict resolution. Some are small community groups; some are large national organizations.

142. IGC states that it currently provides on-line services, including Internet access, to approximately 15,000 organizations, including approximately 500-600 schools. A majority of the non-profits who use its services are organizations concerned with human rights and the environment. A growing number of its clients are concerned with health issues, such as HIV/AIDS and women's health.

143. A few of the organizations who currently use IGC as their Internet access provider include SIECUS (the Sex Information and Education Council of the United States), the

Family Violence Prevention Fund, Stop Prisoner Rape, Human Rights Watch, Pacifica Radio, Amnesty International, UNICEF, AIDS Treatment News, Institute for Intercultural Understanding, International Gay and Lesbian Human Rights Commission, InsideOUT, LambdaLetters (HIV Information), On the Issues (progressive women's quarterly), Population Action International, Planned Parenthood, Catholics for a Free Choice, Asians and Pacific Islanders for Reproductive Health, The Center for Reproductive Law and Policy, The Hesperian Foundation and the Native American Women's Health Resource Center. IGC does not monitor the content of organizations' on-line activity. Some of the organizations listed above discuss and disseminate information about human sexuality, reproductive issues, human rights, and obscenity issues.

144. As part of its Internet access, IGC makes available to members thousands of Internet discussion groups and operates, on behalf of members, hundreds of public mailing lists or discussion groups. Lists operated by IGC include those on topics of gay and lesbian human rights, AIDS and HIV treatment, women's health and violence against women. These and other discussion groups may sometimes discuss human sexuality and human bodily functions.

J. STOP PRISONER RAPE

145. Stop Prisoner Rape, Inc. (SPR) is a non-profit corporation that describes itself as dedicated to combating the rape of male and female prisoners and providing assistance to survivors of jailhouse rape. SPR is a national organization, founded in 1980 and incorporated in New York State in 1994.

146. SPR describes its purpose as to provide education, information, and advocacy regarding sexual assault in the nation's prisons, jails and juvenile institutions. See SPR exhibits in the ACLU Plaintiffs' exhibit book.

147. SPR maintains a site on the Internet that relates the experience of prisoners who have been raped, offers advice, and provides information to the general public on the issue of prisoner rape. SPR's web site is located at http://www.igc.apc.org/spr/.

148. Information is sent to SPR from prisoners and former prisoners across the country, and SPR determines what to include on the SPR Web Site.

149. The SPR Web site contains a variety of textual and graphical documents concerning prisoner rape: a number of testimonials and excerpts of letters from survivors of prisoner rape, information on high profile cases that SPR monitors, SPR reports on national and state legislation dealing with prisoner rape, government documents, statistical reports, bibliographies, AIDS prevention information, articles, transcripts of lectures, advice literature to prisoners, press releases, news alerts, and SPR legal documents. See SPR exhibits.

150. The SPR Web Site also links to other Web Sites it deems relevant to the problem of prisoner rape such as The Federal Bureau of Prisons, The National Institute of Corrections, the American Bar Association, magazine articles, and scholarly texts.

151. SPR also provides information through postings to the Usenet Newsgroups, especially "alt.prisons" and "talk.rape." Some of what SPR posts includes occasional materials of the type described above in connection with its Web site. Many of the posts to newsgroups consist of answers to questions or comments on messages posted to others and usually quotes verbatim the question or comment that elicited the response.

152. SPR also uses electronic mail via the Internet for internal communications. It also maintains an electronic listserver mailing list, which it makes available to anyone with

an Internet electronic mail address. These listserver programs include lists dedicated to stopping rape, prison issues and incarceration health care issues, among others. SPR currently exercises no control over subscriptions to these lists. SPR is currently in the process of setting up its own listserver subscription operation. The content of outgoing electronic mail is similar to messages to Usenet Newsgroups described above.

153. Information provided by SPR on its Web Site is graphic and sexually explicit. The SPR home page contains two disclaimers regarding the sexually explicit nature of some of the contents.

154. The SPR Web Site contains prisoner accounts of rape.

K. AIDS EDUCATION GLOBAL INFORMATION SERVICE (AEGIS)

155. The AIDS Education Global Information System ("AEGIS") is a Bulletin Board System ("BBS") established in 1990 that contains a database on HIV and AIDS. The hardware for AEGIS is located in San Juan Capistrano, California. AEGIS is incorporated as a nonprofit 501(c)(3) educational corporation in California. Prior to the incorporation of AEGIS, AEGIS functioned as an AIDS outreach ministry of the Sisters of St. Elizabeth of Hungary, also incorporated in the State of California.

156. AEGIS is currently available by dialing (714) 248-2836. AEGIS allows all users free access for up to 20 minutes per day. Users must register by providing a first and last name, address and phone number. Registered users may access all AEGIS conferences and databases for up to 20 minutes per day and may download up to 1 MB of information per session. Registered subscribers ($36/year individuals, $60/year organizations) receive unlimited use of AEGIS, participation in conferences, unlimited downloading, the

ability to send and receive e-mail, use of an offline text reader and are able to uplink to additional resources.

157. Although AEGIS currently has no direct link to the Internet, other than e-mail and a UUCP newsfeed, it is working to establish a Web site during the first or second quarter of 1996. The National Library of Medicine, a branch of the Federal Government, has given AEGIS a grant that will cover part of the cost of establishing this Internet site.

158. The Systems Administrator ("Sysop") for AEGIS is responsible for the daily maintenance of AEGIS, which includes locating information on the Internet from government and non-government organizations from around the world. The Sysop imports this material into the AEGIS database, and exports it daily via a file transfer system known as FIDONET. In cooperation with HIVNET, whose home page is located on the Internet at http://www.hivnet.org, AEGIS offers AIDS information in English, as well as French, Dutch, German and Spanish.

159. AEGIS states that as of March 14, 1996 it had 1,340 registered members and received approximately 25-75 calls per day. Because AEGIS is a BBS, the number of visits it receives is limited by the number of modems connected to the BBS hardware. Currently AEGIS allows up to five users simultaneous access. AEGIS states that it currently contains 2 gigabytes of information, which includes over 104,000 files from the National Library of Medicine's AIDSLINE database.

160. AEGIS provides access to a wide variety of information, such as technical medical reports, legal information, various discussion groups and personal testimonies of people living with AIDS. Periodical documents available on-line include, but are not limited to: The Center for Disease Control AIDS Daily Summary, AIDS Treatment News, Gay Men's Health Crisis Treatment Issues, Health Information

Community Newsletter and Body Positive Online Magazine, as well as the texts of AIDS reports and studies. AEGIS members may join mailing lists for discussion groups and newsgroups that discuss AIDS-related issues, including AIDS drugs, spirituality, and women's issues. Much of this information is available in English as well as Dutch, French, German and Spanish.

161. AEGIS is available to anyone who can access the BBS.

L. BIBLIOBYTES

162. BiblioFile Books On Computer, doing business as BiblioBytes, is a company that was founded in January 1993 for the purpose of selling electronic versions of print books over the Internet's World Wide Web.

163. BiblioBytes is incorporated in New Jersey and has its principal place of business in Hoboken, New Jersey.

164. BiblioBytes contracts with publishers and writers to obtain the rights to publish the electronic version of books that have previously been published in print form. BiblioBytes currently has the rights to over one thousand titles. BiblioBytes also publishes some texts that have not been previously published in print form and that are available for purchase only online. The books available through BiblioBytes cover a variety of genres including mystery, science fiction, romance, fantasy, erotica, and classics.

165. BiblioBytes' web page provides information about the company and a list of available book titles, arranged by genre, that can be purchased. An interested buyer can place an order by e-mailing an order form to BiblioBytes. The order form, which requires name, address, credit card number, and order information, can be filled out directly on the BiblioBytes web site. Once BiblioBytes receives the order by e-mail, it sends the electronic book to the buyer via e-

mail after verifying and charging the credit card.

166. BiblioBytes sells an electronic version of Harlan Ellison's collection of short stories, "Love Ain't Nothing But Sex Misspelled." BiblioBytes also sells a book (available only online) by John Anderson entitled "Panaflex X."

167. BiblioBytes owns the rights to reproduce in electronic form exact copies of books that already exist in print form. These "rights" do not include the right to alter the content of the books.

M. QUEER RESOURCES DIRECTORY (QRD)

168. Queer Resources Directory (QRD) is an unincorporated association that provides an online archive of materials pertaining to lesbian, gay, bisexual, transsexual, and transgender issues.

169. The QRD's home page, an electronic table of contents, is located at http://www.qrd.org/QRD/, accessible through computers that have access to the Internet. See QRD exhibits in ACLU Plaintiffs' exhibit book. QRD requires neither payment nor registration for access to the QRD archive. Entirely run by volunteers, the QRD receives no funding aside from individual donations.

170. The primary QRD computer is located in Portland, Oregon. Distribution point computer locations include Beltsville, Maryland; Los Angeles, California; San Francisco, California; Christchurch, New Zealand; and Tel Aviv, Israel; the United Kingdom and Michigan. Communication with QRD's volunteers is done primarily by computer communications.

171. QRD describes its purpose as providing a comprehensive resource of anything on the Internet that pertains to lesbian and gay issues. The topics included in the QRD archive include academic reports and studies, legal documents,

professional publications and personal testimonies on topics such as parenting, families, marriage, youth organizations, religion, HIV/AIDS, media, conferences, celebrations, history, business issues, legal information, workplace issues, politics, activism, and directories of lesbian and gay organizations around the world. These main topics are linked to other Internet sites. The QRD contains textual, graphical, audio and video material.

172. Users who wish to add a link or a document to the QRD site submit their links to QRD archive. These new links and documents are periodically screened by a QRD volunteer to ensure that QRD reagrds them as topically relevant and that they meet QRD's quality standards. QRD does not maintain an official archive of erotic works. However, some of its materials make reference to gay and lesbian sex. For example, QRD's archive contains *FaT GiRL*, an electronic magazine ("e-zine") about fat lesbians. The magazine contains poetry, community resources, as well as some erotic fiction.

173. Some topics in the QRD pertain to issues of safer sex and HIV/AIDS, and, for example, provide sometimes graphic information on how to perform safer sex.

174. The QRD contains links to local magazines from around the world that pertain to lesbian and gay issues. These include, for example, *Hothead Paisan* and *Cuir Underground*, which contain sexual or erotic material. See QRD exhibits in ACLU Plaintiffs' exhibit book.

175. The SysAdmin to the QRD also uses other on-line services that pertain to the lesbian and gay community, including subscribing to online mailing lists.

N. CRITICAL PATH AIDS PROJECT, INC.

176. Critical Path Project, Inc. is incorporated in the State of Pennsylvania.

177. Since 1989, Critical Path AIDS Project has operated a 24-hour AIDS treatment telephone hotline, designed to answer questions for Persons with AIDS (PWAs) and health care workers with questions on symptoms, diagnosis, and treatment.

178. Critical Path AIDS Project has also operated a computer bulletin board system (BBS), also available to the public 24 hours a day, free of charge by dialing (215) 463-7160 by modem. The hardware for this BBS is located in Philadelphia. This BBS uses hardware and software designed to permit simulation of multiple, "real time" discussions on HIV/AIDS treatment and research.

179. In addition, since May, 1995, Critical Path AIDS Project has been providing an AIDS Web page on the World Wide Web. The URL address of this page is http://www.critpath.org. The Web page, either directly or through links to other locations, offers information about, among other things, the ways in which AIDS is transmitted. The Web page discusses the types of sexual activities that might put a person at risk for contracting AIDS and how a person might minimize or eliminate the risk of infection. See Critical Path exhibits in ACLU Plaintiffs' exhibit book.

180. Among the information that is or will be available on Critical Path's Web page is: 1) prevention and treatment information in eight or more Asian languages (under construction); 2) full-text clinical trials protocols from the major AIDS clinical trials networks; 3) research and treatment information for PWAs and health care workers; 4) links with organizations, data, and services world around, and 5) searchable databases of AIDS treatment newsletters and newsgroup discussions.

181. Critical Path's Web page offers access to databases at over 1000 research institutions around the world. The Page offers a search engine for, for example, an e-mail directory

for researchers at the National Institutes of Health. Critical Path maintains data on and links to information on alternative and complementary therapies. Critical Path links to libraries of photographs and microphotographs illustrating HIV and AIDS and its microbiology.

182. Critical Path also hosts the Web pages of a number of organizations, regional and national, such as We the People Living with AIDS/HIV of the Delaware Valley, Minority AIDS Project of Philadelphia, and "Fight-the-Right" Network.

183. Critical Path also hosts electronic mail lists, including one for the "Fight-the-Right" Network and one for the Penn Consortium (HIV doctors and researchers in the Philadelphia area).

184. Critical Path offers SLIP (Serial Line Internet Protocol) accounts to users free of charge. These accounts allow users to access the Internet without going through a commercial provider. Critical Path distributes a suite of software to persons who register for these accounts. This free, public domain software includes: Netscape (a Web page browser), Eudora (an e-mail manager), Free Agent (a newsgroup reader), a gopher client, an Archie client, Telnet, and FTP (File Transfer Protocol).

185. Critical Path has developed software interfaces for the data resources it makes available. These include 1) a search engine which searches text posted to sci.med.aids newsgroups since 1992 (approximately 500 gigabites); 2) a search engine which searches text in newsletters in Critical Path's extensive AIDS newsletter library; 3) a collection of search engines which search the World Wide Web and gopher sites for the search term(s); and 4) a feedback form for our users to describe the most used features of our web page and to offer criticisms.

186. Critical Path AIDS Project has offered its shell ac-

count and/or SLIP account users access to a full-feed of USENET newsgroups. It does not subscribe to some newsgroups which are primarily libraries of pictures.

187. Critical Path AIDS Project has about 1,100 registered BBS users and approximately 120 users with SLIP accounts or shell accounts. It intends soon to upgrade its host system computer and expand the number of phone lines that it operates, which is currently 12.

188. Critical Path also is currently working with the Youth Health Empowerment Project (YHEP), which provides health counseling, outreach and AIDS information to youths. It will also be hosting a Web page for YHEP on its system.

O. WILDCAT PRESS, INC.

189. Wildcat Press Entertainment is a limited liability partnership established in 1994 and located in Beverly Hills, California. It is currently in the process of incorporating in the state of California. Wildcat Press is a division of Wildcat Entertainment. Wildcat Press also includes *YouthArts*, an on-line magazine by and about lesbian and gay youth. Wildcat Press publishes gay and lesbian literature, as well as the works of young gay and lesbian writers. Wildcat Press maintains several Internet sites.

190. Wildcat Press maintains a company Internet site containing text and graphics. The home page is located at http://www.gaywired.com/unity/wildcat/wildcat.htm and currently contains 13 pages of text. Computers for this site are physically located in Southern California and operated by Matt Skallerud of Southern California Gaywired. At this web site, Wildcat Press offers users the opportunity to order its books on-line as well as offering excerpts from two books by Patricia Nell Warren, THE FRONT RUNNER and HARLAN'S RACE. See Wildcat Press exhibits in ACLU Plaintiffs' exhibit book.

191. The Wildcat Press home page is an electronic table of contents pointing to materials found on its Internet site and is linked to other sites on the Internet.

192. Wildcat Press also publishes Ms. Warren's new on-line syndicated column, "News You Won't See on TV." The column consists of editorial-length commentaries focusing mainly on gay, lesbian, bisexual and transgender people in American society. The columns are sent via e-mail from wildcatprs@aol.com, the e-mail address of Wildcat Press, to a growing list of on-line newsgroups and print publications who have e-mail addresses.

193. In addition to publishing books, Wildcat Press also publishes two youth electronic magazines ("e-zine") called *YouthArts East* and *YouthArts West*, which are located at http://dolphin.upenn.edu/~lgba and http://spidey.usc.edu/qf/yap, respectively. The hardware for these e-zines operate out of the University of Pennsylvania and the University of Southern California. YouthArts also maintains a link page directing youth to other Internet sites. The original e-zine, *YouthArts East*, currently contains approximately 15 pages of text and graphics. The second e-zine, *YouthArts West*, currently contains approximately 100 pages of text and graphics. See Wildcat Press exhibits.

P. DECLAN MCCULLAGH DBA JUSTICE ON CAMPUS (JOC)

194. Justice on Campus began in the fall of 1995. It is housed on the private computer of a 17 year-old student at the Massachusetts Institute of Technology. Its web site is maintained by Declan McCullagh of Pittsburgh, Pennsylvania, who is currently a student at Carnegie Mellon University, due to graduate in the spring of 1996. Justice on Campus is accessible at http://joc.mit.edu/.

195. Justice on Campus describes its purpose as providing

an information clearinghouse on free speech issues on college campuses.

196. In the course of providing information on college campuses, Justice on Campus sometimes provides the text of the communications at issue and responds to them.

197. In addition to the foregoing, Justice on Campus maintains a listserv entitled "fight-censorship," started in November 1994. It is run out of computers at Carnegie Mellon University. The list currently contains about 140 people, including journalists and others interested in censorship issues. The list is intended to pass along information in the form of articles, press releases, reports, and opinions.

Q. BROCK MEEKS DBA CYBERWIRE DISPATCH

198. Brock N. Meeks is employed as the Washington, D.C. correspondent for Wired Magazine, a print publication covering cyberspace issues that is based in San Francisco, California.

199. Since late 1993, Mr. Meeks has published on the World Wide Web The CyberWire Dispatch, which covers cyberspace issues. There are currently 8,000 subscribers to CyberWire Dispatch. CyberWire Dispatch is published irregularly, but about once a week. It is sent out via the Internet on request from a computer in Fredericksburg, Virginia. Past issues are archived at www.cyberwerks.com on a computer at Liberty Hill Media Works, a computer consulting company in San Francisco, California.

200. CyberWire Dispatch contains "investigative stories," informational pieces, and commentary on cyperspace issues. For example, it investigates claims of people and companies offering services over cyberspace, provides information about the status of legislation affecting cyberspace, and comments on political issues dealing with technology.

201. CyberWire Dispatch commentaries include, for example, an article about the Marty Rimm study on pornography in cyberspace. See Cyberwire Dispatch exhibits in ACLU Plaintiffs' exhibit book.

202. CyberWire Dispatch also contains a column called "Muckraker," which can be found at www.hotwired.com.

R. JOHN TROYER DBA THE SAFER SEX PAGE

203. John M. Troyer is currently a graduate student in the Pharmaceutical Chemistry Department at the University of California, San Francisco. He also maintains an archive of information on the World Wide Web known as the Safer Sex Page, accessible at http://www.safersex.org/.

204. The Safer Sex Page began in June 1994. It is currently housed on a computer located in San Francisco. The Safer Sex Page charges no access fees for the site. It is currently recruiting a group of volunteers to help maintain and organize the site.

205. The Safer Sex Page describes itself as aiming to provide information on safer sex.

206. The Safer Sex Page is composed of two separate components: the information pages and the Safer Sex Forum. The information pages include brochures about safer sex, HIV transmission, and condoms, as well as resources for health educators and counselors. The Safer Sex Forum allows users to add their own comments to a monthly discussion topic or engage in a dialogue on other issues. The Safer Sex Page includes textual, graphic, audio, and video material. See Safer Sex exhibits in ACLU Plaintiffs' exhibit book.

207. Some of the brochures on the Web Page are based on information received from other groups including the Centers for Disease Control and Prevention, the United States

Department of Health and Human Services, and the Los Angeles Gay and Lesbian Community Services Center. Other brochures are written specifically for the Safer Sex Page by Mr. Troyer and other volunteers.

208. The Safer Sex Page provides information about safer sex practices. The Safer Sex Page also provides information helpful in avoiding other sexually transmitted diseases and unwanted pregnancy.

209. The Safer Sex Page contains a "disclaimer" that explains that it includes sexually explicit material that may offend some readers, or alternatively a "Parental Discretion Advised" advisory.

210. The Safer Sex information pages include, among other postings, the following material: guidelines regarding the HIV transmission risks of certain sexual acts; information about the use of dental dams during oral sex; discussion of lesbian sexual acts; an explicit cartoon showing how to use a condom; a video of a woman putting a condom on a realistic-looking plastic model penis; and a video of a man putting a condom on his penis. See Safer Sex exhibits.

211. The Safer Sex Forum includes language about sexual acts and practices. Past topics have included condom brands, how to talk about safer sex with a sex partner, and masturbation.

212. The Safer Sex Page states that it is currently planning to post material including anatomical photos of male and female genitalia, transcripts of interviews in which teenagers speak about their sexual activities, and articles describing how to eroticize safer sex precautions.

213. Mr. Troyer currently provides links that allow users of the Safer Sex Page to easily visit other sites with similar information.

214. In addition to maintaining the Safer Sex Page, Mr.

Troyer also uses other online services. For instance, he sometimes answers questions on safe sex on the Usenet at alt.safe.sex.

S. JOHNATHAN WALLACE DBA THE ETHICAL SPECTACLE

215. Jonathan Wallace is a software business executive and attorney based in New York City.

216. Under the pen name Jonathan Blumen, he maintains The Ethicl Spectacle, a monthly newsletter on the World Wide Web. The newsletter is accessible at http://www.spectacle.org.

217. The Ethical Spectacle began in January 1995 and rents space to house the newsletter from a computer server in Montclair, New Jersey. Each issue of the Ethical Spectacle is approximately 20-30 pages.

218. The Ethical Spectacle describes itself as aiming to address issues at the intersection of ethics, law, and politics in American life.

219. In the course of its discussions, the newsletter sometimes provides material such as: in June 1995, the Ethical Spectacle dealt with the Nazi concentration camp Auschwitz that included explicit descriptions of human experimentation, some of which dealt with sexual subjects. Also, in November 1995, the Ethical Spectacle excerpted from the writings of Nadine Strossen, Catharine MacKinnon, and Wendy McElroy on pornography and discussed the subject of pornography generally. See Ethical Spectacle exhibits in ACLU Plaintiffs' exhibit book.

220. The Ethical Spectacle provides links to sexually explicit material on the WEB.

T. PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.

221. Planned Parenthood Federation of America (PPFA) is a national voluntary health organization in the field of reproductive health care. PPFA describes itself as providing educational information about sexuality and reproductive health, as well as engaging in advocacy on these issues, including abortion. PPFA's 153 affiliates describe themselves similarly.

222. PPFA operates a site on the World Wide Web. The site is operated through the computer of plaintiff Institute for Global Communications, which is located in California. The site has been in operation since January 1, 1996.

223. PPFA's site provides sexuality education and reproductive health information. PPFA also provides an e-mail service, by which users can direct specific questions to PPFA, and they can provide specific answers. PPFA has received and responded to several inquiries through this mechanism.

224. PPFA provides information relating to practices to reduce unintended pregnancy and sexually transmitted infections, such as the virus that causes AIDS. PPFA provides, for example, specific instructions on how to use a condom. These instructions are accompanied by an illustration of a condom being placed on an erect penis.

225. PPFA provides general sexuality education information. PPFA provides, for example, requisite information about male and female genitalia and reproductive systems. This information is accompanied by descriptive illustrations. See PPFA exhibits in ACLU Plaintiffs' exhibit book.

226. PPFA also provides a range of information about abortion.

227. Through interactive computer services, including e-mail from its affiliates and questions and comments from e-

mail service users, PPFA also receives information regarding performing and obtaining abortions, practices to reduce unintended pregnancies and sexually transmitted infections and sexuality information generally.

228. The PPFA Web site presents a user with some general information and a menu of specific topics. Specific information is accessed by choosing a topic and then selecting sub-topics. PPFA's Web site is linked to several other Web sites, including some operated by its affiliates, that provide additional information on the topics covered on the PPFA site.

III. ALA PLAINTIFFS

A. AMERICAN LIBRARY ASSOCIATION/ FREEDOM TO READ FOUNDATION

229. The American Library Association ("ALA") and Freedom to Read Foundation ("FTRF") both have offices at 50 East Huron Street in Chicago, Illinois. The ALA is the organization which represents libraries and librarians throughout the United States. As of January 31, 1996, ALA's membership includes approximately 58,000 members, with more than 44,000 working librarians. ALA's members are in public libraries, academic libraries, special libraries, school libraries and media centers all over the United States. The ALA was founded in 1876. ALA is a non-profit, educational organization which describes itself as committed to the preservation of the American library as a resource indispensable to the intellectual, cultural, and educational welfare of the Nation.

230. FTRF is a non-profit membership organization established in 1969 by the American Library Association. The FTRF describes its purposes as promotimg and defending free speech.

231. ALA's members are primarily librarians, professionals dedicated to enhance the ability of their patrons to access information. Many libraries offer their patrons access to the Internet through facilities located in libraries, where patrons can access information posted on the Internet by third parties. Data compiled by the Public Library Association ("PLA") in 1995 indicates that for the 468 public libraries serving populations of 100,000 or more (which libraries serve over 57% of the United States population), 23.3% offer Internet access directly to patrons and 28.2% offer Internet access to patrons with a staff intermediary. *See* Plaintiffs' Exhibit 226. Additionally, according to the PLA, 67% of all academic libraries provide access to the Internet for faculty and students.

232. Many libraries have their own World Wide Web sites on the Internet and post their own material or offer patrons links to other World Wide Web sites. Such libraries may post materials such as their card catalogues, information about current events, textual information or art, or other materials from their library collections where licensed or permitted to do so under copyright law, or may sponsor "chat" groups. Such information is accessible by patrons with access to the Internet.

233. Libraries with their own Web sites may post their entire card catalogues online. For example, the online catalogue of the Fort Vancouver Regional Library in Fort Vancouver, Washington (http://www.fvrl.org), includes titles of popular works, such as NO SHIT, THERE I WAS, edited by Michael Hodgson, which is a collection of short stories about the outdoors; HOW TO SHIT IN THE WOODS, by Kathleen Myer, which is a book about the environment; and FUCK YES, by Wing Fing, which is a philosophy book.

234. Libraries or academic institutions with Web sites may also post or offer access to art posted on the Internet. For example, famous nude works by Botticelli, Manet, Matisse,

Cezanne and others can be found on the Internet, and are marked as Plaintiffs' Exhibit 228.

235. Libraries with Web sites may provide access to information that relates to medical and sexual topics. For example, the "Internet Public Library" compiled by the University of Michigan Library contains information on contraception, the proper use of condoms, AIDS information, and information about other sexually transmitted diseases. It can be found at http://ipl.sils.umich.edu, and is marked as Plaintiffs' Exhibit 230.

236. Libraries with Web sites may offer access to information on entertainment and news. For example, one library's Web site offers the text of a skit by Monty Python, a popular group of performers from England, which contains words such as "piss-ant," and can be found at http://ipl.sils.umich.edu/ref by moving to ocf.berkely.edu/70/00/library/monty-python/bruce, marked as Plaintiffs' Exhibit 231.

237. The ALA and its members have adopted the "ALA Library Bill of Rights," whose policies extend to information available through electronic means. A copy of the "ALA Library Bill of Rights" is marked as Plaintiffs' Exhibit 232. On January 24, 1996, the ALA Board adopted "Access to Electronic Information, Services, and Networks: an Interpretation of the LIBRARY BILL OF RIGHTS," marked as Plaintiffs' Exhibit 233.

B. AMERICA ONLINE, INC.

238. America Online, Inc. ("AOL") is a commercial online service provider with offices in Jacksonville, Florida, Oklahoma City, Oklahoma, Ogden, Utah, and Vienna, Virginia. Founded in 1985 and headquartered in Vienna, Virginia, AOL creates interactive services for the U.S. and international markets by developing "electronic communities" to meet the needs of the mass market. Incorporated in Dela-

ware, AOL has in excess of 4000 employees worldwide. AOL, in a joint venture with Bertelsmann AG, launched its European services in 1995 and its Canadian service in 1996.

239. AOL provides its members with its own online content in addition to a range of Internet services. AOL's subscribers retrieve, post, transmit, download, and forward material from the AOL online service and the Internet, including newsgroups and Web sites around the world. AOL's subscribers use the service, and its access to the Internet, to send e-mail, hold online conferences, "chat" in "real time," exchange software, take classes, shop, and create their own Web pages.

240. AOL states that it has tripled its membership over the last year, from 1.5 million subscribers in January 1995 to over 5 million. Most AOL members dial a local access number to connect to the service. A monthly fee of $9.95 provides access to all of AOL's services, including Internet access, for up to five hours each month. Each additional hour of use is charged at $2.95.

241. AOL's service includes over 6000 bulletin boards plus numerous USENET groups from the Internet. Each bulletin board is typically based on a general topic. Every bulletin board can accommodate up to 50 folders. Each folder covers a more specific topic. Each folder can accommodate up to 500 postings. AOL states that approximately 10 million messages are posted on AOL bulletin boards at any given time. Anyone logged on to AOL has the capacity to post or read a bulletin board message. Some bulletin boards are moderated for content; many are not. Messages posted to AOL's bulletin boards are available to all AOL members for viewing.

242. AOL's service includes many "chat rooms" on a range of topics. The topics may be created by members, by AOL, or by third-party content providers. The chat areas operate

like electronic conversations. An online user types in a statement, and it is transmitted to the other members who have entered the chat room. Anyone logged on to AOL has the capacity to participate in a chat room.

C. SOCIETY OF PROFESSIONAL JOURNALISTS

243. The Society of Professional Journalists (the "Society") is a voluntary, non-profit organization of nearly 14,000 members nationwide. Its headquarters are in Greencastle, Indiana. The Society is the largest and oldest organization of journalists in the United States, representing every branch and rank of print and broadcast journalism, including student journalists, professional journalists, and journalism academicians. In existence for over 80 years, the Society describes its purpose as dedicated to perpetuating a free press and to educating its members about the First Amendment and other issues affecting the journalism profession.

244. The Society and its members are participants and providers of information on the Internet. The Society operates a Web page providing general announcements of the Society's activities, including the posting of press releases about the Society's activities, notices of upcoming events, and highlights of upcoming issues of the Society's magazine, Quill.

245. The Society, through its members, also operates a listserv called "SPJ-L," a forum among more than 1,000 Internet users (both Society members and non-members) from roughly 25 countries to discuss and debate primarily journalism-related issues. The Society does not edit these messages for content.

246. The Society, through its members, operates a second listserv called "SPJ-C." Like SPJ-L, SPJ-C is a forum for members and non-members to discuss and debate primarily

journalism-related issues. SPJ-C, however, is geared primarily to the Society's members who are students at our nation's colleges and universities. The Society does not edit messages posted on SPJ-C for content.

247. The information provided by the Society on SPJ-L and SPJ-C is available free of charge through the Internet. As journalists, the Society s members write news stories, articles and columns made available over the Internet and other interactive computer networks.

D. SURFWATCH, INC.

248. SurfWatch Software, Inc. is a privately held software development company based in Los Angeles, California. SurfWatch currently employs 15 people.

249. SurfWatch was founded in January, 1995, by Mr. Duvall, his wife Ann Duvall, and Jay Friedland. The first product the company developed is their namesake product, SurfWatch.

250. In 1969, Mr. Duvall wrote the software (RFC 2) which enabled the first communications over the ARPAnet (the ancestral Internet).

E. MICROSYSTEMS SOFTWARE, INC.

251. Microsystems Software, Inc. is a privately-held company based in Framingham, Massachusetts. Founded in 1989, the company develops and markets Internet and productivity software. In 1995, Microsystems ranked number 223 on the Inc. 500 list of fastest growing privately-held companies. Microsystems employs 55 full-time employees.

252. Microsystems products include (1) HandiWARE, which was developed to enable persons with disabilities to interface with computers; (2) CaLANdar, a calendar/ scheduling program; and (3) Cyber Sentry, which allows

private, Local Area Network managers to monitor the number of software licenses in use at a particular time.

F. RECORDING INDUSTRY ASS'N OF AMERICA, INC.

253. The Recording Industry Association of America, Inc. ("RIAA") is a non-profit trade association whose member companies produce, manufacture and distribute over 90% of the sound recordings sold in the United States.

254. RIAA represents over two hundred record companies who together produce the vast bulk of recorded music in the United States. Many RIAA member companies market their copyrighted works online through World Wide Web sites which typically include material such as lyrics, sound and video clips, and biographical information on artists.

G. ASSOCIATION OF RESEARCH LIBRARIES

255. The Association of Research Libraries ("ARL") is a not-for-profit association founded in 1932, and states that its mission is to shape and influence the future of research libraries in the process of scholarly communication. ARL is comprised of 119 libraries serving every major North American research institution and operates as a forum for the exchange of ideas. The membership of ARL includes university libraries; large, research-oriented public libraries; and certain government libraries.

256. ARL member institutions make no-cost or low-cost online access to information available to their patrons, faculty, and staff. These institutions provide e-mail, gopher and World Wide Web access to their patrons.

257. ARL member institutions also contribute to the resources available on the Internet.

H. PEOPLE FOR THE AMERICAN WAY

258. People For the American Way (PFAW) is a District of Columbia non-profit organization with offices in Washington, D.C., New York, New York, Los Angeles, California, Atlanta, Georgia, Boulder, Colorado, Indian Rocks Beach, Florida and Austin, Texas. PFAW was founded in 1980, and has more than 300,000 members nationwide including parents, teachers, librarians, Internet users, business people and others. A copy of PFAW's mission statement is marked as Plaintiffs' Exhibit 282.

259. Since its inception PFAW has communicated with its members and constituents through the use of direct mail, issuance of reports, papers and our newsletter, and through exposure in the media. In the last year, the Internet has become a principal means of communication for PFAW.

260. PFAW's Web site was started in January, 1996. In addition, the "Expose the Right Campaign," a project of PFAW and People For the American Way Action Fund, started a separate Web site in January, 1996. PFAW staff and members also utilize Internet resources, such as e-mail, listservs and the World Wide Web.

I. NEWSPAPER ASS'N OF AMERICA

261. The Newspaper Association of America (NAA) is a Virginia non-profit organization headquartered in Reston, Virginia with offices in Washington, New York, Chicago and Detroit. NAA was formed June 1, 1992, with the merger of the American Newspaper Publishers Association, the Newspaper Advertising Bureau and several other newspaper marketing organizations. NAA members include more than 1,500 newspapers in the United States and Canada. NAA members account for approximately 85 percent of the daily newspaper circulation in the United States. In January 1996, NAA launched a New Media Federation for newspaper professionals with an interest in new media issues, as a resource for electronic news and information. More than 175 of NAA's member newspapers are currently involved with developing and distributing content on the Internet. Newspapers with Internet-based services range from small weeklies with circulations under 10,000 to major metropolitan newspapers with circulations over 1 million.

262. Newspapers provide electronic versions of their printed product on Web sites and through special forums set up by commercial online service providers. The electronic version of the printed newspaper may include the current issue and archived issues. –In addition, content offered online may include news and information from wire services and syndicates, original content developed for the electronic service, content from local third-party providers, classified advertisements, display advertising and user-generated content from messaging services such as message boards, "real-time chat" and e-mail communications. The Web sites of NAA members usually are linked to NAA's own Web site.

263. Newspapers make their online services available through a variety of means, including free services, subscription-based services, premium-priced features and advertiser-supported services. Most newspapers available on commercial online services (America Online, CompuServe, etc.) do not charge extra (beyond the charges from the online service provider) for access to the basic electronic product. Most newspapers with Web sites also do not charge subscriptions for their online resources, which are available to users with access to the Internet. About 60 newspapers are also Internet service providers in their communities, selling subscriptions for Internet access. Some such newspapers have established electronic forums for local communities to communicate and to conduct business.

264. Several newspapers host content from other providers (e.g. The Boston Globe site includes content from several

radio and TV stations, museums, weekly newspapers, etc.); lease space on their Web servers to other companies (e.g. the News and Observer also hosts sites for the Poynter Institute and the Freedom Forum); or offer consumers the ability to create and store their own home pages on the newspaper's site (e.g. Evansville Courier).

J. THE UNIVERSITY OF CALIFORNIA SANTA BARBARA LIBRARY

265. The University of California, Santa Barbara (UCSB), is one of nine campuses of the University of California.

266. The UCSB Library serves as the primary library for approximately 1,000 faculty members, 2,500 staff members, and over 18,000 students.

267. The Library states that its role is to meet the information needs of this community, including providing Internet access.

268. The UCSB Library provides access to the Internet, including the World Wide Web, e-mail, and gopher services, for its students, faculty, and staff. UCSB Library states its policy is to provide free access to these services. In addition to providing Internet access, librarians instruct students, faculty and staff how to access and use Internet services such as e-mail, gopher, and the World Wide Web.

269. Some faculty members assign reading assignments to students by informing students where the required material can be found on the Internet, via library links to textual databases. Some of the titles that students have been asked to access in this fashion include *Archives of Sexual Behavior*, *Lambda Book Report*, and *Sex Roles: A Journal of Research*.

270. The University has a campus Web site. Any campus department or unit can develop its own home page and have

it linked to the campus site. Similarly, almost all departments have established gopher servers. The homepages of the university's art history and studio art programs include faculty and student exhibits on their Web pages, and these sometimes include depictions of nudes. They are accessible to anyone with access to the World Wide Web.

271. The USCB Library estimates that of the approximately 5,000 freshman on campus, 1,000 to 1,500 are not yet eighteen years old.

K. COMPUSERVE INC.

272. CompuServe Incorporated ("CompuServe") is an Ohio corporation with its principal place of business in Columbus, Ohio. CompuServe provides proprietary online information access services to its customers, provides access to the Internet, including USENET newsgroups and World Wide Web sites, to individuals and corporations worldwide, and provides network services to corporations that wish to use CompuServe's secure network for transmitting data worldwide. CompuServe and its licensee together had approximately 4.2 million subscribers as of January 31, 1996. This is an increase of 56% since January 1995.

273. CompuServe provides access for its users over its network and by providing them with software that allows access to CompuServe's services. Connection to CompuServe is made via modems and home computers. CompuServe's subscribers pay a monthly membership fee of $9.95 for access to virtually all of CompuServe's services. Membership includes, among other things, five free hours of connect time. An additional hourly fee of $2.95 applies for time in excess of five hours. This is the standard plan; other pricing arrangements are offered as well. CompuServe also provides Internet-only service for a monthly fee of $19.95, which includes unlimited hours of Internet use.

274. CompuServe features hundreds of distinct areas on its online service called "Forums" (a registered trademark of CompuServe, Inc.). Each Forum area is dedicated to a particular subject. Subscribers can post images, messages, and other content relevant to the topic and read messages posted by other subscribers. Many messages are posted to CompuServe Forum areas each day.

275. CompuServe also provides within these Forum areas electronic "chat rooms." Chat rooms are initiated both by independent Forum Managers, who manage the various Forums under contract with CompuServe, and by CompuServe's subscribers themselves. CompuServe offers parental controls free of charge to its subscribers.

L. COMMERCIAL INTERNET EXCHANGE ASS'N

276. Commercial Internet eXchange Association ("CIX") is a not-for-profit trade association incorporated under the laws of the state of Delaware and having its principal place of business at 1039 Sterling Road, Suite 201, Herndon, VA 22070. CIX is comprised of commercial Internet access providers. CIX presently consists of over 100 domestic members and over 50 international members, including major market participants as well as small entrepreneurs. CIX's domestic members comprise over 75% of the nation's leading commercial Internet access providers.

277. CIX states that its goals include to facilitate global connectivity among commercial access providers, to further the development and use of the Internet, and to promote environments for Internet commercialization.

M. NETCOM ONLINE COMMUNICATION SERVICES, INC.

278. NETCOM On-Line Communication Services, Inc. ("NETCOM") is incorporated in Delaware and maintains its

executive offices in San Jose, California. NETCOM's principal business is providing dial-up accounts for individuals and high-speed dedicated connections for businesses.

279. NETCOM operates its own high-speed, digital network and provides direct access to Internet applications and resources, including e-mail, NetNews, and World Wide Web services, for more than 300,000 subscribers. NETCOM's network is comprised of leased high-speed dedicated lines and over 200 points-of-presence in metropolitan areas in more than 40 states, with 800 number access in areas where there is no local access.

280. Many of NETCOM's subscribers connect with the Internet using NETCOM's NetCruiser software, which includes an interface that introduces Internet information by subject area and provides several search tools for access to the Internet. A NETCOM subscriber can obtain access to the Internet, as well as its commercial applications, for a monthly subscription fee.

N. THE ASS'N OF AMERICAN UNIVERSITY PRESSES, INC.

281. The Association of American University Presses, Inc. (AAUP) is a New York State not-for-profit organization with offices in New York City. AAUP was created in 1937 to assist member presses in carrying out their educational objectives with economy and efficiency. AAUP provides its 114 members with cooperative marketing services, professional development programs, statistical analyses, organizational and public relations representation, and professional publications. A copy of AAUP's member list is marked as Plaintiffs' Exhibit 205.

282. AAUP members publish approximately 18% of the books published in the United States each year and over 700 journals. Members of AAUP follow an independent peer

review system for the works they publish.

283. AAUP states its members are developing publication options that utilize the Internet. Currently, AAUP maintains a comprehensive online catalogue, and certain journals published by AAUP members are available on the Internet.

O. PRODIGY SERVICES COMPANY

284. Prodigy Services Company is a provider of online and Internet access services, with offices in New York City, White Plains, and Yorktown Heights, New York. Prodigy was originally founded in 1984 to develop and market the PRODIGY service, an online network featuring news, weather, sports and financial information; reference and educational materials; online shopping; travel reservations; banking and brokerage; and public and private communications in the form of bulletin board, "chat rooms," and e-mail.

285. Prodigy also provides access directly to the Internet, with its World Wide Web, USENET newsgroups, and Internet e-mail. In addition to providing those linkages as an integrated part of the PRODIGY service, Prodigy also markets an Internet-only service, where consumers connect to the Internet, but do not purchase access to the PRODIGY service.

286. Depending on the originating source, Prodigy retrieves, stores and delivers information and communications in different ways. Prodigy owns and operates a proprietary network composed of mainframe storage and processing computers connected to several hundred minicomputers (servers) in local calling areas around the country. Some editorial content, bulletin boards, and subscriber e-mail is stored on Prodigy's mainframe computers until consumers request it. Prodigy also provides access to news feeds, stock quotes and the Internet. In the case of frequently requested Web sites, Prodigy often caches (temporarily stores) the information on

its own mainframes to enhance performance and speed up delivery of content to the end user. Frequently requested content is also "pushed out" over the network to reside closer to the user on Prodigy's minicomputers, also for performance reasons. E-mail and bulletin boards are never stored anywhere other than Prodigy's mainframes.

P. AMERICAN SOCIETY OF NEWSPAPER EDITORS

287. The American Society of Newspaper Editors ("ASNE") is a nonprofit professional membership organization of nearly 900 individuals who hold positions as directing editors of daily newspapers throughout the United States. Many of the daily newspapers which are currently edited by ASNE members in print form are now, or will soon be, published in electronic version available to the public on the Internet, the World Wide Web and other online computer services. Currently, ASNE members hold editorial positions on more than 100 of approximately 175 daily newspapers in North America that have been identified this month by the Newspaper Association of America as being available online. Some of these services are accessible only through proprietary commercial online service providers such as America Online, Prodigy and CompuServe, while other newspapers have established their own Web sites.

288. The principle work of ASNE members involves making editorial decisions regarding what content will be published in the daily editions of their newspapers. The contents of daily newspapers varies from one publisher to the next, but typically includes news reports, commentary material, opinion pieces and advertisements -- together with accompanying photographs and graphic illustrations -- concerning a range of subject matter.

Q. MEDIA ACCESS PROJECT

289. Media Access Project (MAP) is a 24 year-old public interest telecommunications law firm organized as a not-for-profit corporation. MAP is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code. MAP's policy statement is marked as Plaintiffs' Exhibit 270.

290. MAP maintains a "page" on an Internet World Wide Web site operated by another public interest organization, Essential Information. Its location is http:\\www.map@essential.org. MAP's staff utilizes Internet resources, such as e-mail, listservs and the World Wide Web. MAP's staff attorneys also participate in discussion groups conducted by Counsel Connect, an online service for attorneys.

291. MAP's Executive Director has been a "panelist" in an online seminar on the Telecommunications Act of 1996 conducted on Counsel Connect. The operators of Counsel Connect maintain a separate "Web Site" on the World Wide Web; much of the online seminar was also posted on the Internet through that mechanism. MAP's attorneys have also engaged in online discussion in various online fora of the candidate speech at issue in *Becker v. FCC*, Civ. Action Nos. 95-1048, 95-1056 (D.C. Circuit).

R. INTERACTIVE SERVICES ASSOCIATION

292. The Interactive Services Association (ISA) is a District of Columbia non-profit association with offices in Silver Spring, Maryland. ISA was founded in 1981 as the Videotex Industry Association (VIA). In January 1992, the VIA changed its name to the ISA. Today, the ISA has 350 members from a variety of large industries in the United States including advertising, cable, computer, consumer electronics, financial services, magazine and newspaper publishing, and telephone. A minority of ISA members are

small entrepreneurs in the interactive services business. ISA members include content providers and developers, online services, Internet access providers, and hardware and software manufacturers. The majority of ISA's members are providing online or Internet services and products. Some members provide interactive telephone, interactive television, and screen telephone product and services.

293. ISA states that its primary purpose is to promote the growth and development of all forms of personal interactive services, including providing members with networking and educational services.

294. ISA members include America Online, CompuServe, Prodigy and Microsoft Network, and Netcom. ISA content provider members include local information services from national newspapers, local community services, and special interest services such as those for senior citizens and physicians.

295. In addition to providing their own content, ISA members provide applications such as e-mail, bulletin boards and chat.

296. In November 1994, the ISA, with the cooperation of the National Center for Missing and Exploited Children and with the financial support of major commercial online services, published "Child Safety on the Information Highway," a brochure advising parents on how their children can avoid inappropriate content & services. The contents of this brochure is available on the major online services and the World Wide Web which includes the ISA's home page http://www.isa.net. ISA estimates that over a half a million copies of the brochure have been distributed to consumers since its release both through online and in hard copy distribution. A copy of the brochure is marked as Plaintiffs' Exhibit 271.

S. MICROSOFT CORPORATION

297. The Microsoft Network ("MSN") is an Internet-based online service providing access to the Internet. MSN members can also access multi-media content properties unique to MSN, use editorially guided Internet navigation tools, and interact with a large MSN "community" of members and Independent Content Providers. MSN membership exceeds 850,000. MSN provides dialup access from fifty countries on six continents worldwide and will soon be available to customers already on the Internet.

298. MSN provides its members access to the Internet, including the World Wide Web, Usenet, and newsgroups, as well as to the material of independent content providers which may be available only to MSN subscribers. Members can also access content (or will soon be able to access content) from Microsoft Corporation (such as Cinemania, Music Central, CarSource, MSN News and an online Encarta encyclopedia) or from joint ventures Microsoft has with others, such as the MSNBC joint venture with NBC News, a joint venture Microsoft has established with Black Entertainment Television, and other content partners such as Paramount's Star Trek and Entertainment Tonight. Some of this content can be, or in the future may be, accessed through the Internet.

299. MSN seeks to provide "screening" capabiliites for certain Usenet adult content newsgroups, and expects that additional parental "screening" technology will soon be available. Microsoft is a part of an industry-wide effort called the Platform for Internet Content Selection (PICS), to provide technological standards for rating and screening content. On February 28, 1996, Microsoft announced that it is working with the Recreational Software Advisory Council (RSAC) in connection with an initiative to rate content on the Internet.

300. Microsoft employees and MSN members are also users

of the Internet. Many of them communicate by email, and post messages to lists and bulletin boards.

301. Microsoft Corporation also provides the Microsoft Internet Explorer, a browser software product for exploring and navigating the Internet. Through its newly-formed Internet Platform and Tools Division, and in its other Divisions, Microsoft provides or is developing other software for accessing the Internet, for establishing and maintaining Internet servers and related services, and for creating Web sites and other Internet content.

T. AMERICAN BOOKSELLERS ASSOCIATION/ AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION

302. The American Booksellers Association ("ABA") was organized in 1900 and is an association of general interest bookstores in the United States. ABA has over 5500 members, including 4300 bookstores who do business in over 6000 locations.

303. Some ABA members are users of the Internet. Over 100 ABA member bookstores currently have active World Wide Web sites. A list of the bookstores is marked as Plaintiffs' Exhibit 258. The most recent list is available at http://www.bookweb.org/bookweb/sellerlist/sellera.html. Some bookstores only operate an electronic site on the Internet, for example Amazon (http://www.amazon.com); Dial-a-Book (http://www.psi.net/DialaBook); Bookstacks Unlimited (http://www.books.com); and Open Book Systems (http://www.obs.us.com).

304. Online bookstores use their Web sites to list and sell books. They also use their Web sites to promote events, advertise book signings and to share information with other bookstores about various titles.

305. Online ABA bookstore members often offer links

through their homepages to the Web sites of publishers, where Internet users can see excerpts of books. An excerpt from the book PRIMARY COLORS, which appears on the World Wide Web site of Random House is marked as Plaintiffs' Exhibit 259. Other bookstores, such as Printer's Inc., also provide excerpts from books. An excerpt is marked as Plaintiffs' Exhibit 260.

306. Many bookstores use their Web sites to list their available titles.

U. ASSOCIATION OF AMERICAN UNIVERSITIES

307. The Association of American Universities (AAU) is a Washington, D.C., not-for-profit higher education association, representing 60 major public and private research universities with strong programs of academic research and graduate and professional education. The American Association of State Colleges and Universities (AASCU) is an organization of more than 400 public colleges and universities and systems across the United States and in Puerto Rico, Guam, and the Virgin Islands. The National Association of State Universities and Land-Grant Colleges (NASULGC), the oldest higher education association in the United States, has 181 member institutions and works to support the contributions that state and land-grant universities make through teaching, research, and public service. The member institutions are represented in each of the aforementioned associations by the presidents and chancellors of those institutions.

308. AAU, AASCU and NASULGC state that they address institutional and national issues affecting undergraduate, graduate, and professional education, and academic research and scholarship. Many of AAU member colleges and universities provide access to the Internet to students and faculty.

V. WIRED VENTURES, LTD.

309. Wired Ventures, Ltd. publishes *Wired*, a monthly magazine that reports on the impact of new technologies on our society. *Wired* has a circulation of over 300,000. Copies of the cover and table of contents of the March 1996 issue as they appear online are marked as Plaintiffs' Exhibit 248.

310. In addition to being distributed in printed format, the editorial content of *Wired* is available on the Internet through HotWired (a news and entertainment service on the World Wide Web) and America Online. Copies of the listing of *Wired*'s editorial content as it appears on HotWired is marked as Plaintiffs' Exhibit 249.

311. *Wired*'s February 1994 issue included an investigative report on government's increasing ability to use computerized driver's license data for such purposes as collecting unpaid taxes, entitled "Nobody Fucks with the DMV." A copy of the article as it appeared through HotWired is marked as Plaintiffs' Exhibit 250.

312. In its June 1994 issue, *Wired* reported on the online "alternative newsgroup" "alt.sex.bondage." A copy of the article as it appeared through HotWired is marked as Plaintiffs' Exhibit 251.

313. *Wired* also publishes articles on cyberspace-related issues. *Wired* currently relies on HotWired and other online services to provide Internet users with access to *Wired*.

W. OpNET INC.

314. OpNet Inc. is a Pennsylvania for-profit corporation located in Bryn Mawr, Pennsylvania. OpNet was founded in 1995, and states that its purpose is to provide complete Internet services, including access to the Internet and Web page hosting. OpNet's customers include both individuals and small businesses throughout the suburban and downtown

Philadelphia area.

315. OpNet's customers receive Internet access via dialing modem connections and/or dedicated telecommunication lines for a flat monthly fee, and not an hourly or usage based fee.

316. Also for a flat monthly fee, OpNet rents space on its server to customers for their Web pages. As Web page services required vary significantly from customer to customer, the pricing varies accordingly.

X. CENTER FOR DEMOCRACY AND TECHNOLOGY

317. The Center for Democracy and Technology (CDT) is a non-profit public interest organization based in Washington, D.C. CDT was founded in December of 1994. CDT states that its mission is to develop and advocate public policies that enhance democratic values and constitutional civil liberties in new communications technologies.

318. CDT relies on the Internet as its primary means of information dissemination, public education and grass-roots outreach. Its newsletter, CDT Policy Post, is published exclusively in electronic form and distributed via the Internet. CDT position papers, analysis of legislation and regulatory proposals, and other information are made available to Internet users, free of charge, on CDT's World Wide Web page and ftp archive.

319. CDT maintains a World Wide Web site ttp://www.cdt.org/) and an ftp (ftp://ftp.cdt.org/) site. CDT also maintains a news publication which it states is received by over 9000 Internet users. CDT staff participate in online discussion groups, public mailing lists, and respond to private electronic mail.

320. CDT's World Wide Web site contains CDT position

papers, analysis of legislation and regulatory proposals, and links to other sites with information related to the Internet, civil liberties issues, and other information. CDT also utilizes its World Wide Web site to conduct political organizing.

321. CDT's principle news publication, CDT Policy Posts, is published only in electronic form. Individuals can subscribe to CDT's Policy Post distribution list free of charge by sending a message to an electronic mail address. In addition, readers may access issues of CDT's Policy Post via Usenet newsgroups, public mailing lists, the World Wide Web, ftp or gopher archives. Subscribers include individual Internet users, Congressional and Executive branch staff, press, industry leaders.

322. CDT also sends its Policy Posts to other open, public channels on the Internet such as Usenet newsgroups and open lists maintained by third parties.

323. In addition to its online news publication, CDT staff regularly post messages to a variety of public mailing lists, Usenet newsgroups, and online chat sessions.

Y. HOTWIRED VENTURES, LLC

324. HotWired Ventures, LLC produces HotWired, a news and entertainment service on the World Wide Web (available at http://www.hotwired.com) offering interactive information about culture, lifestyle, politics and technology without charge. A copy of HotWired's Overview page is marked as Plaintiffs' Exhibit 261.

325. HotWired has produced a feature on the poetry of Allen Ginsberg; an illustrated feature entitled "Quest For Fire," about the "Burning Man" festival, and a critique of *Time* magazine's story on "Cyberporn." Copies are marked as Plaintiffs' Exhibits 262 and 263.

326. One of HotWired's regular sections is called Piazza, an interactive discussion area.

Z. THE HEALTH SCIENCES LIBRARIES CONSORTIUM

327. The Health Sciences Libraries Consortium ("HSLC") is a regional library organization of nearly 600 institutional members dedicated to cooperative library resource sharing and access to electronic information. Among the HSLC's members are colleges of pharmacy and drug manufacturing and research firms. The offices of HSLC are located at University City Science Center, 3600 Market Street, Suite 550 in Philadelphia, Pennsylvania. The HSLC is incorporated in Pennsylvania and has its principal place of business in Philadelphia. The Internet addresses of the HSLC are http://www.hslc.org and http://telnet.hslc.org.

328. The HSLC states that its primary focus is serving the information needs of academic, medical and health sciences libraries. In addition, the HSLC provides access to a range of library and electronic information resources in a variety of subject areas to public and school libraries. Since 1993, the HSLC has made available its own online resources as well as access to the Internet, primarily in the health sciences areas.

329. The HSLC maintains its public online resources through its own servers and internal network, to provide Internet interconnectivity including access to the World Wide Web and most other Internet protocols such as electronic mail and chat services. The HSLC publishes information on its Web pages related to its service offerings and provides links to local and international information resources through its "menu" system.

330. The HSLC's menu system is accessible by individuals through the HSLC membership of the institution with which

the individuals are affiliated. In addition, institutional members may elect to make access available from public terminals which enable individuals without access accounts to obtain HSLC's resources.

331. The HSLC hosts unmoderated online discussion groups on a variety of health and non-health topics. The HSLC also provides access to a large number of unmoderated discussion groups located elsewhere on the Internet. Some of these discussion groups address issues in health and non-health related areas and may contain sexual content, descriptions of the human body, human reproduction, and diseases of the human reproductive system. One example is marked as Plaintiffs' Exhibit 257. Some postings within news and discussion groups contain attached electronic files which with appropriate software may be translated into on-screen images by users.

332. The HSLC also provides information on the HIV virus and the transmission of AIDS. One example is marked as Plaintiffs' Exhibit 257.

IV. ALA DECLARANTS FOR THE PRELIMINARY INJUNCTION HEARING TO BE HELD ON MARCH 21 AND 22, 1996

333. Robert Croneberger is the Director of the Carnegie Library of Pittsburgh, with offices at 4400 Forbes Avenue, Pittsburgh, Pennsylvania.

334. The Carnegie Library of Pittsburgh was established in 1895. The library makes no distinctions between patrons on the basis of age. For example, the library does not offer separate library cards for adults and children.

335. The Carnegie Public Library of Pittsburgh has two World Wide Web servers on the Internet: http://www.clpgh.org and http://trfn.pgh.pa.us. The library offers pa-

trons access to the catalog, various information lists and news about current events. Additionally, the Carnegie Library of Pittsburgh hosts at one of its Web sites the text of a study entitled "Marketing Pornography on the Information Superhighway: A Survey of 917,410 Images, Descriptions, Short Stories, and Animations Downloaded 8.5 Million Times by Consumers in Over 2000 Cities in Forty Countries, Provinces, and Territories" prepared by Martin Rimm, Principal Investigator.

336. The Library's catalog is posted at its Web site to permit patrons to search the collections available at the library and request material from the library. Titles include: (1) SO FUCKING WHAT? by A.M. Wellman (Random House, 1990); and (2) THE ICE OPINION: WHO GIVES A FUCK? by Ice-T (as told to Heidi Siegmund)(St. Martin's Press, 1994). These titles can be found at the Library's Web site, located at http://www.clpgh.org.

337. The full text of the study "Marketing Pornography on the Information Superhighway" is located at http://trfn.clpgh.org/guest/mrtext.html. The Carnegie Library of Pittsburgh makes the study available for research and analysis. The study has been accessed by many users. The study contains descriptions of the sexual images the study's investigator found.

V. ALA DECLARANTS NOT TESTIFYING

A. THE FORT VANCOUVER REGIONAL LIBRARY

338. The Fort Vancouver Regional Library, located at 1007 East Mill Plain Boulevard, Vancouver, Washington, is a member of the American Library Association. The Fort Vancouver Regional Library, established in 1950, covers 4,200 square miles in SW Washington State. It serves over 310,000 people residing in eleven cities, and numerous unin-

corporated rural communities in 3 counties. The library states that its goal is to provide a wide array of information to its patrons. The library has used an interactive computer service to offer patrons access to the card catalog, the American Heritage Dictionary, Books in Print, Contemporary Authors. Fort Vancouver Regional Library leases the texts of these magazines and online resources.

339. The information in the Fort Vancouver Regional Library catalog is available to library patrons, members of the PORTALS Consortium in the states of Washington and Oregon and anyone else with knowledge of the Library's Internet address. The PORTALS Consortium consists of 18 libraries in the Portland/Vancouver metropolitan area. In addition, the Fort Vancouver Regional Library has just completed development of its own World Wide Web site on the Internet. The Web site includes information about the Library, such as branch hours, and links to other World Wide Web sites.

340. The library's card catalog also is available via the Internet to enable patrons to locate resource materials, identify the availability of material at a particular library location and request material from the library. Titles include NO SHIT, THERE I WAS, edited by Michael Hodgson (ICS Books, 1994)(a collection of short stories about the outdoors); HOW TO SHIT IN THE WOODS, by Kathleen Myer (Ten Speed Press, 1989)(a book on protecting the environment for mountaineers); FUCK YES, by Wing Fing (Shepherd Books, 1988)(a philosophy book); and ICE OPINION: WHO GIVES A FUCK?, by Ice T (St. Martin's Press, 1994) (an interview with a rock star). These titles can be found in the Library's catalog, which is located via telnet command at fvrl.lib.wa.us.

341. The Fort Vancouver Regional Library has also purchased the rights to the texts of over 800 magazines and the index of approximately 700 others. Thus patrons access the

full texts of magazines such as Psychology Today, Cosmopolitan, Redbook and others. *See* Plaintiffs' Exhibits 223, 224 and 225. The library's magazine database offers patrons access to full text articles on a variety of subjects.

B. BANTAM DOUBLEDAY DELL PUBLISHING GROUP, INC.

342. Bantam Doubleday Dell Publishing Group, Inc. ("BDD") is a publishing company with its principal offices located in New York, New York. BDD's parent company is Bertelsmann, A.G., a worldwide media company. BDD is a member of the Association of American Publishers, Inc. ("AAP"), the major trade association of United States book publishers.

343. BDD publishes fiction and non-fiction works directed at all interests and age groups. BDD's authors range from Nobel Prize Laureate Naguib Mahfouz, and the world's bestselling novelists John Grisham and Danielle Steel to humorists Jerry Seinfeld and Al Franken. In 1995, BDD published more than 1000 new titles.

344. The preponderance of BDD's business today still entails the publication of hard- and soft-cover books in paper form, and their dissemination through wholesale and retail outlets. BDD is looking toward making its books available online.

345. BDD has developed a site on the Internet's World Wide Web, introduced in July 1995. BDD's home page, which is located at http://www.bdd.com, allows Internet users to access information about the following: new book releases; a weekly featured author entitled "A Visit With . . ."; and various topical areas of interest. *See* Plaintiffs' Exhibit 207. With regard to each newly released book, BDD's Web site provides the following: a picture of the book cover; a description of the book; a sample chapter; and

the ability for users to link-up to additional resources on the Internet that are related to the described book. Examples are marked as Plaintiffs' Exhibits 208-211. With regard to the featured authors, BDD's Web site offers: background information about the author; a description of various works by the author; an excerpt from the author's latest work; pictures of the book covers of those books discussed; the opportunity for users to send letters to the author; and the ability for users to link-up to additional resources on the Internet that are related to the author and/or the author's works. Examples are marked as Plantiffs' Exhibits 212-217. With regard to the topical areas of interest ("forums"), which focus on numerous topics, such as science fiction, business, and romance, BDD's Web site provides: ancillary materials pertaining to both books and authors; the ability and opportunity for users to speak with each other and various authors via bulletin boards; and the opportunity for users to sign-up for and receive monthly newsletters relating to the user's topic of interest. Examples are marked as Plaintiffs' Exhibits 218-221.

346. BDD, in conjunction with online services such as America Online, CompuServe, Prodigy and The Microsoft Network, also offers to its users an opportunity to participate in online chats, enabling users to "meet" authors and speak with them in "real time."

347. BDD's Web site offers content that caters to young readers from 4 to 18 years of age.

C. THE UNIVERSITY OF PENNSYLVANIA LIBRARIES

348. The University of Pennsylvania has offices at the Van Pelt-Dietrich Library Center, 3420 Walnut Street, Philadelphia, Pennsylvania. The University of Pennsylvania Libraries post material on their Web sites and offer access to Web sites that support the curriculum of the University. A sam-

ple index of material to which the library offers access through the Internet is marked as Plaintiffs' Exhibit 252.

349. The University of Pennsylvania offers its faculty, students and staff access to the Internet. Additionally, the University of Pennsylvania and the University of Pennsylvania Libraries have their own World Wide Web sites on the Internet. Much of the information placed on the Web sites of the University of Pennsylvania Libraries is accessible to users of the Internet, whether affiliated with the University or not.

350. Some information placed by the University of Pennsylvania on the Internet is available only to faculty, students and staff of the University of Pennsylvania. The library has, for example, purchased or leased for use the major databases in psychology and sociology. Classes at University of Pennsylvania in abnormal psychology access these databases to reference primary research literature in that field. These databases include research on pedophilia, prison behavior and interest in pornography. One example of this type of material is marked as Plaintiffs' Exhibit 253-254, the PsycInfo database accessible through the PennLin link on the Library's homepage: http://www.library.upenn.edu.

351. The University of Pennsylvania also offers an undergraduate class on sexuality. One example of online databases to support this class is marked as Plaintiffs' Exhibit 255, and may be located at http://abacus.oxy.edu/QRD (the "Queer Resources Directory").

352. The library also offers access for faculty and students to the database ARTFL through our homepage. This contains the primary text of many French texts, such as the text of Marquis de Sade's JUSTINE (1791), located at http://humanities.uchicago.edu/ARTFL/ARTFL.html. An excerpt is marked as Plaintiffs' Exhibit 256.

353. Some databases at University of Pennsylvania already

are restricted to faculty and students. Some students are under the age of eighteen.

D. THE FREE LIBRARY OF PHILADELPHIA

354. The Free Library of Philadelphia, with offices at 1901 Vine Street, Philadelphia, PA, was established in 1891 and offers its own World Wide Web site on the Internet. The library offers patrons access to its catalog and electronic databases.

355. The Library's catalog is posted at the Library's own Web site to enable patrons to locate resource materials and request material from the library.

356. Catalog titles include: Ice-T, THE ICE OPINION: WHO GIVES A FUCK? (1994); Jong, Erica, THE DEVIL AT LARGE: ERICA JONG ON HENRY MILLER. (1993) (Catalog entry carries a contents note which includes "Crazy cock in the land of fuck"). These titles can found at the Library's Web site, which is located at http://www.libertynet.org/--flp.

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